

Strengthening Faculty Handbooks

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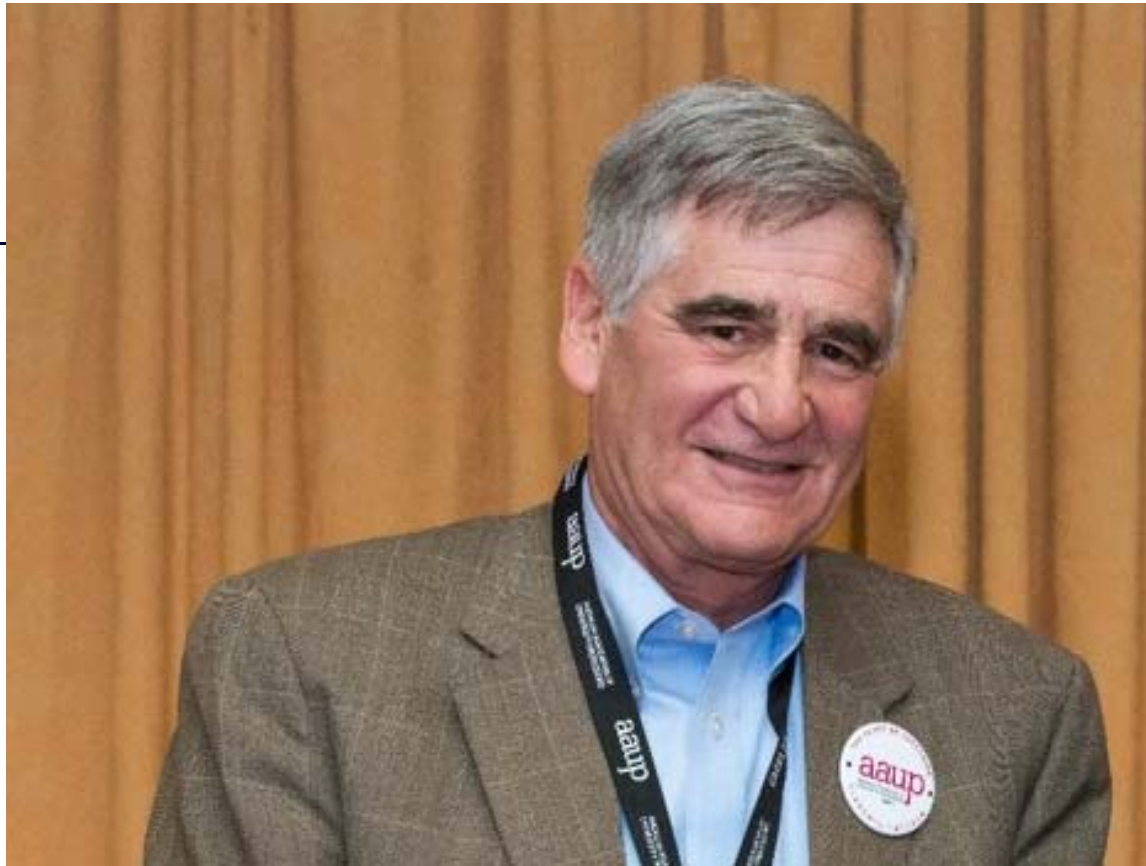
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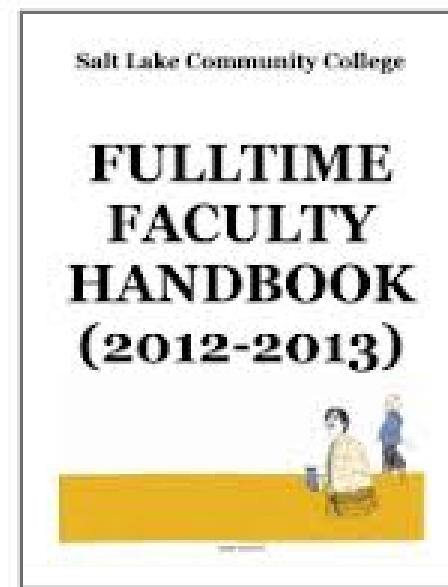
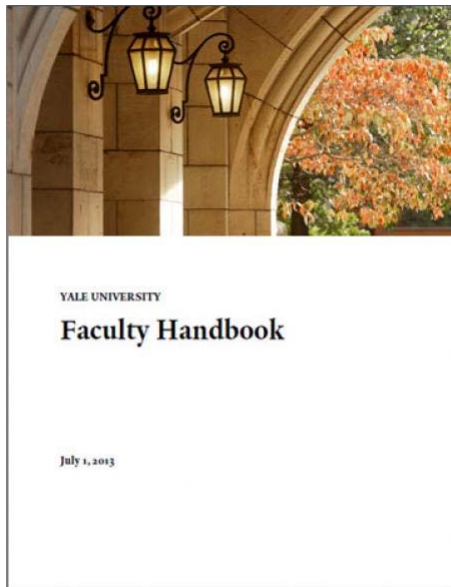
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Why Are Handbooks Important?



Many union contracts incorporate the handbook by reference. And without a union, a faculty handbook is the closest thing to a contract that you may have.



Is a Handbook a Contract?

This differs from state to state.

Often, for a handbook to be considered contractual, it must be cited in the initial appointment letter or reappointment notice.

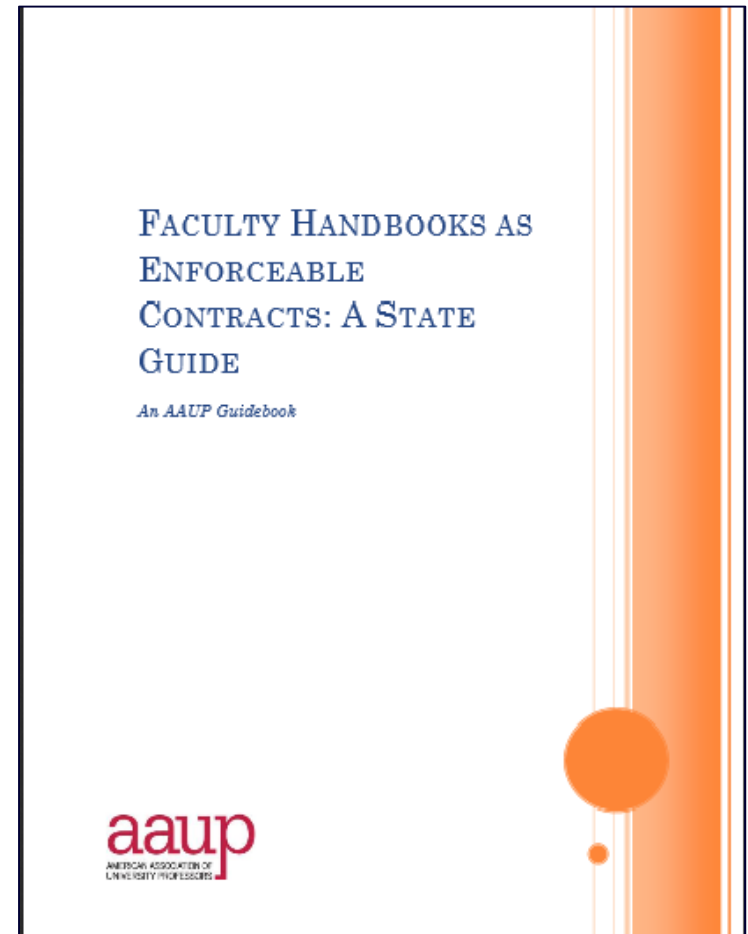


Faculty Handbooks and CBAs

- How faculty handbooks interact with collective bargaining agreements (CBAs) depends on state law and the CBA.
- The AAUP generally encourages union chapters to incorporate handbooks by reference into the agreement, but there could be reasons why they shouldn't or can't.

AAUP Guidebook Available

The AAUP publishes a guidebook of court decisions related to the contractual status of faculty handbooks.





Overview

Faculty handbooks should include policies relating to:

- ❑ Shared governance
- ❑ Academic freedom and academic due process
- ❑ Grievances
- ❑ Industry, government, and non-profit research agreements





Shared Governance

Since 1915, the AAUP has advocated meaningful faculty participation in institutional decision making.

Key policy:

***Statement on Government of Colleges and
Universities***



Shared Governance

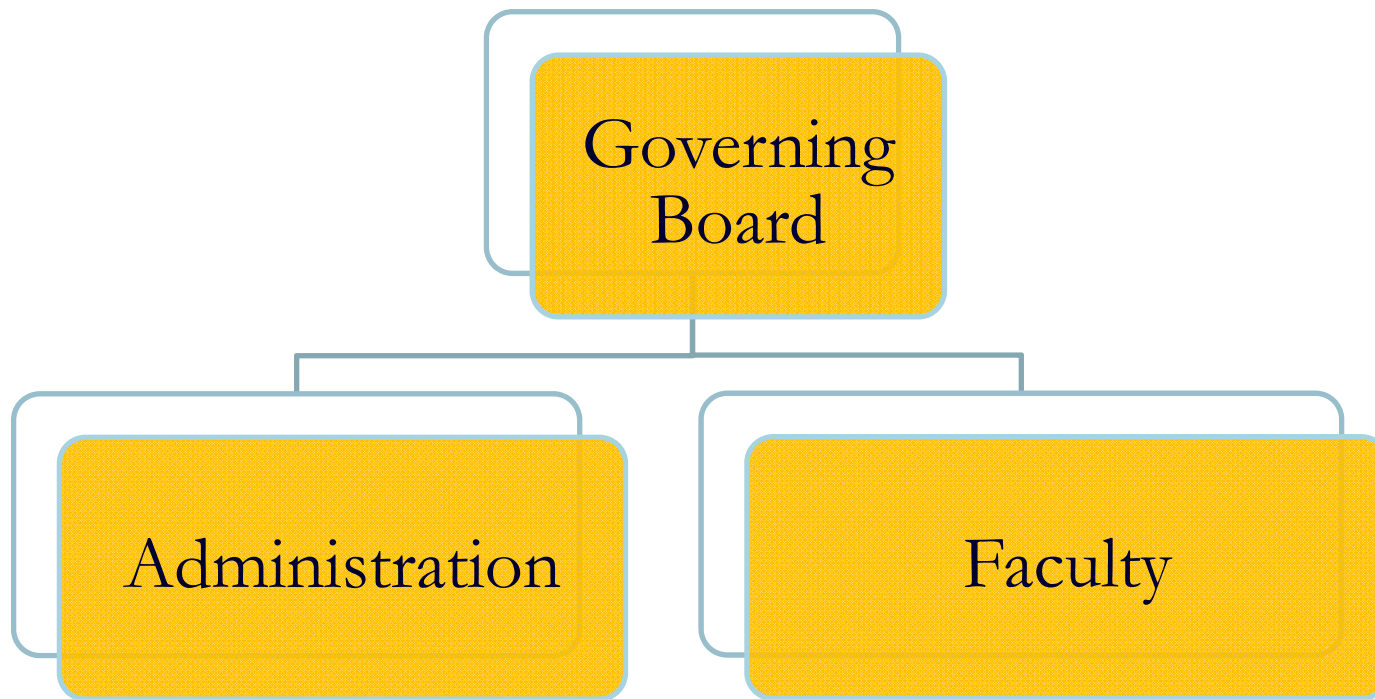
AAUP recommendations regarding institutional governance are general and conceptual.

This is because governance practices vary widely depending on

- institutional culture
- size
- public or private status.

Shared Governance

The three major components of institutional decision making:



The 1966 *Statement*

is the chief person who speaks for the institution. It is to plan, to organize, to direct, and to represent. The general support of board and faculty.

5. The Academic Institution: The Faculty

The faculty has primary responsibility for such fundamental areas as curriculum, subject matter and methods of instruction, research, faculty status and methods of the educational process.* On these matters the governing board or delegated by it to the president in exceptional circumstances, and for reasons communicated to the faculty should, following such communication, have further transmittal of its views to the president or other time element, and the policies of other groups, both of the institution may set limits to realization of faculty

The faculty sets the requirements for the degree requirements have been met, and authorizes the program when achieved.

Faculty status and related matters are primarily appointments, reappointments, decisions not to reappoint and dismissal. The primary responsibility of the faculty is that its judgment is central to general educational policy in the field or activity have the chief competence for judgment. Likewise, there is the more general competence of the faculty in having a broader charge. Determinations in these areas are made through established procedures, reviewed by the chair of the board. The governing board and president s

“The faculty has primary responsibility for such fundamental areas as **curriculum**, subject matter and methods of **instruction, research, faculty status**, and those aspects of student life which relate to the **educational process.**”



The 1966 *Statement*

In these areas the “governing board and president should . . . concur with the faculty judgment except in rare instances and for compelling reasons which should be stated in detail.”



The 1966 *Statement*

“Agencies for faculty participation in the government of the college or university should be established at each level where faculty responsibility is present. An agency should exist for the presentation of the views of the whole faculty. The structure and procedures for faculty participation should be designed, approved, and established by joint action of the components of the institution. Faculty representatives should be selected by the faculty according to procedures determined by the faculty.”



Governance and Handbooks

A faculty handbook should contain:

- ❑ **A definition of the term “faculty.”**
- ❑ **Governing documents of faculty governance organs**, such as senates or councils.
- ❑ **Governing documents for the faculty as a whole.**
For example: a constitution, bylaws, or standing rules.



Governance and Handbooks

Institutions should have regulations on the election and appointment of committees.

Faculty representatives to committees, task forces, and *ad hoc* committees should be elected by the faculty or appointed by an elected body.



Governance and Handbooks

A faculty handbook should contain:

- ❑ A statement that, in areas in which the faculty has primary responsibility, the faculty is responsible for formulating and approving policies, subject to final approval by the administration & board.
- ❑ Expectations for faculty serving as representatives.
- ❑ Policies regarding the role of the faculty in
 - budgetary matters
 - administrative searches and evaluations
- ❑ Arrangements for faculty-board communication.



Governance and Handbooks

Policies regarding changes to the faculty handbook should be explicit regarding

- ❑ Who may make changes
- ❑ How they may be made
- ❑ Whose approval is needed





Academic Freedom

Key policy:

*1940 Statement of Principles on Academic Freedom
and Tenure*

Also important:

*Recommended Institutional Regulations on
Academic Freedom and Tenure*



A Current Threat

Garcetti v. Ceballos—a 2006 US Supreme Court decision.



Definition of *Academic Freedom*

Academic freedom is the freedom to teach, both in and outside the classroom, to conduct research and to publish the results of those investigations, and to address any matter of institutional policy or action whether or not as a member of an agency of institutional governance. Professors should also have the freedom to address the larger community with regard to any matter of social, political, economic, or other interest, without institutional discipline or restraint, save in response to fundamental violations of professional ethics or statements that suggest disciplinary incompetence.

From: *Protecting an Independent Faculty Voice: Academic Freedom after Garcetti v. Ceballos* (2009)



Tenure

- ❑ “Tenure” is an indefinite appointment terminable only for cause.
- ❑ 1940 *Statement*: “After the expiration of a probationary period, teachers or investigators should have permanent or continuous tenure, and their service should be terminated only for adequate cause, except in the case of retirement . . . or under extraordinary circumstances because of financial exigencies.”
- ❑ In addition, terminations may occur due to program discontinuance.



Academic Due Process

- ❑ Tenure protects academic freedom.
- ❑ Academic due process protects tenure.
- ❑ The term “academic due process” applies and extends the concepts of constitutional due process to the specific circumstances of the academy.



Terminology

- Probationary and non-tenure-track faculty are sometimes **nonreappointed** or **non-renewed**.
- Tenured, probationary, and non-tenure-track faculty are sometimes **dismissed for cause**.
- Tenured, probationary, and non-tenure-track positions are sometimes **terminated**.



Changes in Law

Laws, and AAUP policies, on termination for medical disability and mandatory retirement for age have changed.

Handbooks may still contain language that is no longer recommended by the AAUP.



Nonreappointment: Notice

Years of Service	Notice should be given by
First academic year of service	March 1
Second academic year of service	December 15
Two or more years of service	At least twelve months before the expiration of an appointment.



Nonreappointment: Procedures

Faculty who	Have the right to
are not reappointed	written reasons upon request
allege discrimination or violations of academic freedom	make this case to a hearing committee
allege inadequate consideration	have their case reviewed by a faculty committee



Dismissal For Cause

“Adequate cause for dismissal will be related, directly and substantially, to the fitness of faculty members in their professional capacities as teachers or researchers.”

--AAUP *Recommended Institutional Regulations (RIR5)*



Dismissal For Cause

Adequate cause is

- ❑ demonstrated incompetence or dishonesty in teaching or research,
- ❑ substantial and manifest neglect of duty, or
- ❑ personal conduct which substantially impairs the individual's fulfillment of institutional responsibilities.



Dismissal Proceedings: Essential Elements

- ❑ Written statement of charges
- ❑ Opportunity for a pre-termination hearing before an elected body of peers
- ❑ Burden of proof rests on the administration, based on clear and convincing evidence in the record as a whole
- ❑ The faculty member has the right to present evidence and cross-examine witnesses
- ❑ The decision is based on the record of the hearing
- ❑ The faculty member may appeal to the governing board.



Suspensions

AAUP policies distinguish between suspensions

- that are imposed prior to a dismissal for cause hearing and
- those that are imposed as a sanction.



Suspensions Prior to Dismissal Hearing

- ❑ Should be used only if immediate harm is threatened.
- ❑ Should happen only after consultation with the faculty committee on academic freedom and tenure
- ❑ A suspension that is intended to be final is a dismissal, and should be treated as such.
- ❑ Salary should continue during suspension.



Sanctions

- ❑ **Major sanctions** short of dismissal (such as suspension) require the same procedural safeguards as dismissal for cause.
- ❑ **Minor sanctions** (such as a letter of reprimand) can be imposed by the administration but can be appealed to the grievance committee.



Grievance Policies

Access to an elected grievance committee is a central element of academic due process.

Consideration should be given to informal and formal grievance procedures.





Program Discontinuance

AAUP recommends that the decision to discontinue a program or department should be

- ❑ based essentially upon educational considerations

OR

- ❑ necessitated by bona fide financial exigency



Educational Considerations

- ❑ Are determined primarily by the faculty.
- ❑ Do not include cyclical or temporary variations in enrollment.
- ❑ Reflect long-range judgments that the educational mission of the institution as a whole will be enhanced by the discontinuance.



Financial Exigency

A severe financial crisis that fundamentally compromises the academic integrity of the institution as a whole and that cannot be alleviated by less drastic means



Financial Exigency

AAUP recommendations:

- ❑ Faculty should be involved at every stage
- ❑ Faculty bodies participating in the process should not be appointed by the administration.
- ❑ All faculty in a program being considered for discontinuance should be informed in writing and given at least thirty days to respond.



Financial Exigency

Faculty should have access to five years of

- audited financial statements, budgets, and detailed cash-flow estimates.
- detailed program, department, and administrative-unit budgets.

The faculty should determine whether all feasible alternatives to termination of appointments have been pursued.



Possible Alternatives to Terminations

- Expenditure of one-time money or reserves as bridge funding
- Furloughs
- Pay cuts
- Deferred-compensation plans
- Early-retirement packages
- Deferral of nonessential capital expenditures
- Cuts to non-educational programs and services, including administration.



Other Policies

Other topics often covered in handbooks:

- ❑ Sexual harassment
- ❑ Sexual assault
- ❑ Academic-industry partnerships
- ❑ Professional Ethics



Thank you!

Send followup questions/comments to:
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