

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 04/26/2012
RUTH A. WILLINGHAM,
CLERK
BY: sls

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

THERESA CAMERON,) 1 CA-CV 10-0323
)
Plaintiff/Appellant,) DEPARTMENT D
)
v.) **AMENDED MEMORANDUM DECISION**
) (Not for Publication -
ARIZONA BOARD OF REGENTS, a) Rule 28, Arizona Rules of
public entity; and MICHAEL CROW,) Civil Appellate Procedure)
in his official capacity as)
President of Arizona State)
University,)
)
Defendants/Appellees.)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. LC2008-000628-001

The Honorable Robert C. Houser, Judge

AFFIRMED

Martin & Bonnett, PLLC Phoenix
by Susan Martin
Daniel L. Bonnett
Mark A. Bracken
Jennifer L. Kroll
Attorneys for Plaintiff/Appellant

Cohen Kennedy Dowd & Quigley, P.C. Phoenix
by Daniel G. Dowd
Rebecca van Doren
Attorneys for Defendants/Appellees

G E M M I L L, Judge

¶1 This is a wrongful discharge case. Dr. Theresa Cameron ("Cameron") challenges the superior court's decision upholding the termination of her employment as a tenured associate professor at Arizona State University ("the University"). For the reasons that follow, we affirm that decision.

FACTS AND PROCEDURAL BACKGROUND

I. Cameron Receives Tenure

¶2 The University hired Cameron, an African-American woman, as an assistant professor in The College of Design, School of Planning in 1997. In that capacity, Cameron was responsible for teaching courses on subjects such as critical infrastructure planning. She received tenure and an associate professor position in 2000.

II. The Post-Tenure Review Process

¶3 During February 2006, a majority of the students in two of Cameron's classes signed petitions complaining about her preparedness, professionalism, and competence. After meeting with the students, the University removed Cameron from one of the classes on or about February 21, 2006.

¶4 On June 2, 2006, Dean of the College of Design, Wellington Reiter ("Reiter"), notified Cameron in writing that she would be subject to the post-tenure review process based

upon unsatisfactory performance. The review, designed to address deficiencies in her teaching performance, never progressed beyond the evaluation stage due to intervening events.

III. Misconduct Allegations

¶15 In March 2007, Kenneth Brooks ("Brooks"), ASU Associate Dean for the College of Design, began receiving reports of alleged misconduct by Cameron. Upon investigating the reports, Brooks became concerned that Cameron had engaged in possible plagiarism, student intimidation, and violation of the course review procedures.

¶16 Initially, some of Cameron's PUP436 students complained that the course syllabus was not consistent with the material being presented in class. In reviewing the syllabus, Brooks confirmed the inconsistency and, based upon discrepancies with Cameron's previous work, began to question its originality. Internet searches confirmed that Cameron had copied material verbatim from syllabi published by others. Additional research confirmed that Cameron had used other sources, without attribution or the authors' permission, to create at least six course syllabi over several years.

¶17 Meanwhile, a student who had previously raised concerns about Cameron in PUP436 (Student A), reported to Dr. Hemalata Dandekar ("Dandekar") that he/she and another student

(Student E), had a confrontation with Cameron after class on March 7, 2007. The class was required for graduation. According to Student A, Cameron told Student E that she "did not want him/her in the class anymore." Student A said that this forced him/her to engage in "damage control" and he/she became concerned about retaining a place in the class. Student A expressed concerns about further contact with the University based upon fears of retaliation.

¶18 Finally, Associate Professor Ruth Yabes ("Yabes") reported to Brooks that Cameron had violated University policy during their co-taught class in the Fall of 2006. According to Yabes, Cameron distributed the evaluation forms herself and remained in the room while the students were completing them.

IV. Cameron's Dismissal

¶19 In light of the allegations raised, Reiter placed Cameron on leave with pay on March 19, 2007. On April 10, 2007, Reiter sent Cameron his recommendation that she be dismissed for cause. Cameron appealed the recommendation, and conciliation efforts failed.

¶10 ASU sent Cameron a notice of dismissal on September 7, 2007. The notice stated that just cause existed for this action because Cameron (1) failed to follow the University's protocol for student evaluations, (2) engaged in perceived retaliatory conduct against two students enrolled in one of her classes, and

(3) plagiarized the work of other authors in developing six course syllabi.

V. This Litigation

¶11 Cameron timely appealed her dismissal to the ASU Faculty Senate's Committee on Academic Freedom and Tenure ("CAFT") in a letter dated September 17, 2007. CAFT accordingly conducted a dismissal appeal hearing on April 22 and May 5, 2008, pursuant to Arizona Board of Regents ("ABOR") Policy 6-201.L. The University had the burden of proving just cause for Cameron's termination by a preponderance of the evidence. See ABOR Policy 6-201(L)(4)(h)(8).

¶12 In its advisory Findings of Fact, Conclusions, and Recommendation, CAFT found that the University had carried its burden and established that Cameron had plagiarized course syllabi, but did not carry its burden with respect to the charges of retaliatory conduct and improper implementation of course reviews. CAFT advised that the plagiarism could best be addressed through enhanced post-tenure review or a performance improvement plan. It also rejected Cameron's April 18, 2007 grievance concerning the University's failure to complete the post-tenure review process.

¶13 Under ABOR policy, University President Michael Crow ("Crow") was authorized to "approve, disapprove, or modify the committee recommendation" by CAFT. ABOR Policy 6-201(L)(4)(j).

On June 23, 2008, Crow rejected CAFT's Findings, Conclusions, and Recommendation. Crow upheld the earlier termination decision on all three grounds. He then affirmed CAFT's determination that Cameron's grievance concerning post-tenure review was moot. He likewise rejected Cameron's request for reconsideration of both decisions on August 12, 2008.

¶14 In accordance with Arizona Revised Statutes ("A.R.S.") section 12-904(A) (2003), Cameron filed a complaint for administrative review against ABOR and Crow (collectively "ASU") in the Maricopa County Superior Court on September 15, 2008. Litigation ensued over whether the administrative record included materials from the case of former ASU Professor Charles Arntzen ("Arntzen"), a file that was in CAFT's possession. According to Cameron, a graduate student had accused Arntzen, a white male, of plagiarism for misappropriating work without attribution, yet he had not been fired. The superior court ultimately denied Cameron's motion to supplement the record to include such materials, which Cameron had never attempted to offer into evidence or to use in questioning witnesses.¹

¶15 On the merits, Cameron filed an opening brief attacking the orders based upon: (1) a violation of due process,

¹ Cameron has not raised issues on appeal concerning the superior court's denial of her requests for an evidentiary hearing, a trial *de novo*, and a stay of the administrative decision.

(2) a denial of equal protection, (3) a lack of substantial evidence to support the termination decision, and (4) an abuse of discretion in failing to complete the post-tenure review process. A full round of briefing followed.

¶16 The superior court affirmed Cameron's termination after finding substantial evidence to support ASU's decision. On March 1, 2010, the court filed a signed judgment dismissing the complaint and awarding no fees or costs. This appeal followed.²

ANALYSIS

I. The Record Contains Substantial Evidence Supporting Cameron's Termination For Just Cause.

¶17 We review an administrative agency's decision to determine "whether there has been an unreasonable action which was taken without consideration and in disregard of the facts and circumstances." *Taylor v. Ariz. Law Enforcement Merit Sys. Council*, 152 Ariz. 200, 202, 731 P.2d 95, 97 (App. 1986). We will not reweigh the evidence, and we will affirm the agency's decision "if there is any substantial evidence in support thereof, and if the action taken by the agency is within the

² Cameron also filed a complaint in the United States District Court alleging that her dismissal violated her equal protection and due process rights, the Rehabilitation Act, 29 U.S.C. § 794 (2006), and 42 U.S.C. §§ 1981, 1983 and 1985 (2006). See *Cameron v. Ariz. Bd. of Regents*, 2008 WL 4838710 (D. Ariz. Nov. 6, 2008) (No. CV-08-1490-PHX-ROS).

range of permissible agency dispositions." *Id.* (citing *Howard v. Nicholls*, 127 Ariz. 383, 621 P.2d 292 (App. 1980)).

¶18 Cameron challenges the misconduct findings on the merits and claims the sanction imposed was "shockingly disproportionate" to the misconduct found. In addition, she maintains that the superior court violated due process and abused its discretion in excluding her expert and documents, and erroneously ruled that she was not entitled to complete the post-tenure review process. We address these arguments in turn.

A. Substantial Evidence Supports Cameron's Dismissal Based Upon Plagiarism Alone.

1. ABOR Policy and the University's Enforcement Role

¶19 The ABOR has jurisdiction to control and supervise all state universities, and to enact regulations for their government. ABOR Policy 5-301(A)(1). Accordingly, the ABOR has adopted a Code of Conduct (ABOR Policy 5-301 *et seq.*) to meet these responsibilities under Arizona law. *Id.*

¶20 Each university's administration assists in the enforcement of these policies, including the Code of Conduct. ABOR Policy 5-301(A)(2). The University is not prohibited by the ABOR Policies from adopting conditions, rules, regulations, and procedures consistent with the Code of Conduct. ABOR Policy 5-301(D)(1). Employees are subject to discipline for violating

the published rules and regulations of conduct. ABOR Policy 5-303.

¶21 According to the ABOR's policy on dismissal or suspension of tenured faculty members:

- a. Tenured faculty members shall not be dismissed or suspended without pay except for just cause. Such dismissal or suspension may take effect only following an opportunity for the faculty member to utilize the conciliation/mediation and hearing procedures as prescribed in ABOR Policy 6-201L.3 and L.4 (Conditions of Faculty Service; Hearing Procedures for Faculty, Conciliation/Mediation and Hearing).

ABOR Policy 6-201(J)(1)(a).

¶22 The ABOR policy defines "just cause" as follows:

- b. Just cause shall include, but not be limited to, *demonstrated incompetence or dishonesty in professional activities related to teaching*, research, publication, other creative endeavors, or service to the university community; unsatisfactory performance over a specified period of time and a failure to improve that performance to a satisfactory level after being provided a reasonable opportunity to do so by the university, as demonstrated through the board-approved post-tenure review process; substantial neglect of or refusal to carry out properly assigned duties; personal conduct that substantially impairs the individual's fulfillment of properly assigned duties and responsibilities; moral turpitude; misrepresentation in securing an appointment, promotion, or tenure at the university; or proven violation of Board or university rules and regulations (including the code of conduct or any other disciplinary rules), depending upon the

gravity of the offense, its repetition, or its negative consequences upon others.

ABOR Policy 6-201(J)(1)(b) (emphasis added).

¶23 Cameron contends that the record does not support just cause for her dismissal because (1) her conduct does not constitute plagiarism, (2) insufficient evidence exists to sustain a violation under ASU's policies and rules, and (3) her termination was shockingly disproportionate to the offense.

2. The Superior Court Did Not Abuse Its Discretion In Determining That Cameron's Conduct Constituted Plagiarism Under University and ABOR Policy.

¶24 Cameron contends that she did not plagiarize anything. She asserts that she merely took material from other sources and incorporated it into her syllabus. Cameron also argues that there is no evidence to support the allegation that she knowingly violated ABOR Policy 5-302(11) as she did not consider a syllabus to be an "academic exercise" or scholarly work.³ We do not find these arguments persuasive.

¶25 In reviewing the determination that Cameron committed plagiarism in violation of ABOR policy, we "defer to an agency's reasonable interpretations of its own regulations." *Pima County v. Pima County Law Enforcement Merit Sys. Council*, 211 Ariz.

³ She also contends that the policy is "vague." We do not address this argument on appeal because Cameron did not assert it in superior court. See *Englert v. Carondelet Health Network*, 199 Ariz. 21, 26-27, ¶ 13, 13 P.3d 763, 768-69 (App. 2000) (declining to address a constitutional issue raised for the first time on appeal).

224, 228, ¶ 18, 119 P.3d 1027, 1031 (2005). The ABOR rules define "plagiarism" as "intentionally or knowingly representing the words or ideas of another as one's own in any academic exercise." ABOR Policy 5-302(11). In addition, the Academic Affairs Policies and Procedures Manual ("ACD Manual") contains a Faculty Code of Ethics forbidding "intentional misappropriations of the writings, research and findings of others" and the use of "creative achievements of colleagues without appropriate consultation and credit." ACD Manual 204-01.

¶26 ABOR Policy 5-302(11) is devoid of any requirement that plagiarism occur in the context of scholarly work.⁴ The policy's operative phrase is "academic exercise." Not only does a syllabus guide students through the subject matter, but it also becomes a part of a university faculty member's personnel file and serves as a basis for promotion and tenure decisions. Such evidence supports ASU's characterization of syllabus preparation as an academic exercise.

¶27 Witness testimony further substantiates the determination that the plagiarism rule extends to syllabi. Dandekar testified that she considers a syllabus to be scholarly work and would never use another professor's syllabus without

⁴ Allegations of plagiarism have previously arisen with respect to teaching statements accompanying a syllabus. Audrey Wolfson Latourette, *Plagiarism: Legal and Ethical Implications For The University*, 37 J.C. & U.L. 1, 65 (2010).

permission. Brooks and Reiter also testified that plagiarism applies in the syllabus format with equal force.

¶128 Cameron presented contrary testimony from her colleague, Dr. David Pijawka ("Pijawka"), another professor in the University's School of Planning. Pijawka testified that he did not consider the development of course syllabi to constitute a piece of scholarship; rather, the professor is simply supplying a road map for the course and subject matter and "there's no real substance." He further opined that rules relating to plagiarism do not apply to material available online, and admitted that he was not familiar with the University's plagiarism policy. Also, Cameron testified that she "saw this differently" and had never heard of anyone being charged with plagiarizing a syllabus.

¶129 Cameron's presentation of conflicting evidence does not supply a basis for reversal. "Even when 'two inconsistent factual conclusions could be supported by the record,'" there is "substantial evidence to support an administrative decision that elects either conclusion.'" *Kuznicki v. Ariz. Dep't of Transp.*, 152 Ariz. 381, 382, 732 P.2d 1119, 1120 (App. 1986) (quoting *Webster v. State of Ariz. Bd. of Regents*, 123 Ariz. 363, 365-66, 599 P.2d 816, 818-19 (App. 1979)). That is the case here.

¶130 As the record reflects, Cameron directly lifted extended quotes from a white paper and conference materials and used them without attribution in her syllabus for PUP494B in the Fall of 2006. That syllabus contains the following unattributed quote from the Clinton Administration's Policy on Critical Infrastructure Protection: Presidential Decision Directive 63, May 22, 1998:

Critical infrastructures are those physical and cyber-based systems essential to the minimum operations of the economy and government. They include, but are not limited to, telecommunications, energy, banking and finance, transportation, water systems and emergency services, both governmental and private. Many of the nation's critical infrastructures have historically been physically and logically separate systems that had little interdependence. As a result of advances in information technology and the necessity of improved efficiency, however, these infrastructures have become increasingly automated and interlinked. These same advances have created new vulnerabilities to equipment failure,^[5] human error, weather and other natural causes, and physical and cyber attacks. Addressing these vulnerabilities will necessarily require flexible, evolutionary approaches that span both the public and private sectors, and protect both domestic and international security.

⁵ In the original document, the Clinton Administration's Policy on Critical Infrastructure Protection, the word used is failures. The word used in Cameron's syllabus, however, is failure.

The same syllabus also duplicates the following statement of Dennis J. Reimer, Director of the National Memorial Institute for the Prevention of Terrorism, to the National Commission on Terrorist Attacks Upon the United States:

Much has been said about the impact of 9/11 on our lives and little of what I have read and heard has been overstated. Whether 9/11 was a defining moment in our history or historians judge best at a later date but it has changed the way we live our lives now and for the foreseeable future.^[6] There has been much discussion about why 9/11 occurred and could it have been prevented. Our dialogue will focus on trying to make tomorrow better, particularly residential development safer and not on making yesterday perfect. In order to do that the city planners and policy makers must recognize that it faces a unique challenge that will require fresh thinking and innovative approaches to develop a plan precisely for local government effort to prevent future 9/11s.

¶31 Nor does the fact that some plagiarized content originally appeared in a "public domain" source, such as the internet, provide a defense. As ASU points out, the very website from which Cameron copied much of her material cautions: "All reproductions of work, in whole or in part, should be clearly identified."

⁶ In the original statement from Dennis J. Reimer, the sentence reads: "Whether 9/11 was a defining moment in our history or not can best be judged by historians at a later date but it has changed the way we live our lives now and for the foreseeable future." This sentence was changed somewhat in Cameron's syllabus.

¶132 Based upon this record, ASU could reasonably interpret ABOR Policy 5-302(11) and ACD Manual 204-01 as applicable to Cameron's action and could conclude that she had repeatedly violated the standards. We accordingly defer to that determination, and affirm Crow's ruling. See *Pima County*, 211 Ariz. at 228, ¶¶ 18-21, 119 P.3d at 1031 (accepting the council's interpretation of the burden of proof intended by the phrase "to the satisfaction of the council").

¶133 Cameron insists that "complexities and shades of difference" can exist within the academic community when crediting contributors for one's findings and interpretations. At times some subtleties may exist, but that only underscores the need for this court to defer to administrative findings.

3. Substantial Evidence Supports The Plagiarism Finding, Including Cameron's Concession That She Copied Other Professors' Work Without Permission Or Attribution.

¶134 We now turn to Cameron's argument that no substantial evidence supports the plagiarism finding. Cameron contends that she did not admit to plagiarism or realize that her acts constituted plagiarism, and that CAFT erred in concluding that she had.

¶135 Cameron testified to CAFT, however:

I've spoken to a number of faculty persons both here at ASU as well as other institutions and they said they have never heard of such a thing as someone being

charged with plagiarizing a syllabi. I don't deny I did it.

¶136 Additionally, Cameron's own Opening Brief concedes that Cameron intentionally and knowingly used materials to create course syllabi without attribution. She also admitted that she started copying others' work for her syllabi because she was being "hammered" by the University administration.

¶137 Irrespective of whether Cameron admitted to plagiarism, the record supports ASU's conclusion that she committed plagiarism repeatedly. ASU's evidence establishes that Cameron pieced together portions of several other authors' syllabi in preparing her Fall 2006 PUP494B syllabus, for example. E-mails from the faculty members whose syllabi were copied establish that Cameron never obtained authorization to use the material, and a couple of the authors expressed concerns about the practice. Also, CAFT determined that she had committed plagiarism. In light of this record, we agree with the superior court that substantial evidence supports the plagiarism finding and just cause for Cameron's termination. See *Agarwal v. Regents of Univ. of Minn.*, 788 F.2d 504, 505, 506, 508 (8th Cir. 1986) (affirming the district court's determination that plagiarism supported the decision to terminate a university professor's employment as the plagiarism "ha[d] ended Professor Agarwal's usefulness to the University

and, in and of itself, [was] grounds for termination"); see also *Korf v. Ball State Univ.*, 726 F.2d 1222, 1227-28 (7th Cir. 1984) (upholding the dismissal of a faculty member for violation of professional ethics); see generally Mark L. Adams, *The Quest For Tenure: Job Security and Academic Freedom*, 56 *Cath. U.L. Rev.* 67, 75-76 (Fall 2006) (violations of university policy provide a clearer case for cause to dismiss than incompetence).

¶38 We conclude that the evidence of record pertaining to plagiarism sufficiently supports ASU's termination of Cameron.

**4. Substantial Evidence Supports the Finding That
Dr. Cameron Improperly Administered a Course
Evaluation and Retaliated Against Two Students.**

¶39 Cameron argues that no substantial evidence exists to support Crow's finding that Cameron improperly administered the course evaluation. She further contends that Crow ignored CAFT's findings on the issue.

¶40 ACD Manual 304-09 states: "The administration [of evaluations] procedure should assure the students' ability to respond forthrightly and anonymously. The evaluation should be distributed and collected by someone other than the instructor; [and] the instructor should not see the evaluation or its summary prior to submitting grades for the course." In addition, the School of Planning's "Course Evaluation Form Instructions" require the faculty member to designate a student to distribute the forms, read the instructions aloud, and

collect and return them to the College of Design's office. The faculty member must leave the classroom before the process starts.

¶41 CAFT found that no violation had occurred. According to Cameron, the superior court should have deferred to CAFT's ability to assess witness credibility and Crow abused his discretion in rejecting CAFT's findings. See *Ritland v. Ariz. State Bd. of Med. Exam'rs*, 213 Ariz. 187, 190, ¶ 10, 140 P.3d 970, 973 (App. 2006) (explaining the rationale for deferring to the administrative law judge's factual findings on witness credibility).

¶42 The problem here is not one of credibility. Rather, CAFT concluded that no evidence supported the charge, and thereby ignored testimony from Yabes and Students A and G that Cameron had distributed evaluation forms herself and had remained in the room for at least part of the time that the students in her Fall 2006 PUP361 class were completing the forms. Even Student F, a witness for Cameron, provided corroboration that Cameron had read the evaluation instructions to the class. Brooks also testified that the uniformly favorable reviews from that class were suspect in light of Cameron's poor scores in previous semesters.

¶43 These facts provide substantial evidence to support Crow's decision. See *Carley v. Ariz. Bd. of Regents*, 153 Ariz.

461, 466-67, 737 P.2d 1099, 1104-05 (App. 1987) (affirming university president's rejection of CAFT's factual findings). Although Cameron can point to evidence supporting another conclusion, it does not entitle her to reversal. See *Kuznicki*, 152 Ariz. at 382, 732 P.2d at 1120.

¶44 Cameron also asserts that no substantial evidence supports the finding that she retaliated against two students. Specifically, she argues that Crow ignored CAFT's recommendation that no evidence supported such a charge.

¶45 ASU's Faculty Code of Ethics prohibits the intimidation of students. ACD Manual 204-02 states that faculty must "recognize that students are individuals and are entitled to an atmosphere conducive to learning and to even-handed treatment in all respects of the teacher-student relationship." Moreover, faculty members must "demonstrate respect for students as individuals" and are prohibited from "participating in or deliberately abetting disruption, interference, or intimidation in the classroom." ACD Manual 204-01. In applying this policy, CAFT concluded that no evidence of harassment existed that would support the charge of retaliatory conduct against her students.

¶46 Student A's testimony and e-mail, which CAFT accepted, recounts that Cameron called out two students, Students A and E, after class and asked one of them to leave the class. This

incident occurred after Student A had shared private concerns about Cameron with the University administration.

¶147 Instead of rejecting Student A's testimony as not credible, CAFT stated that it did not share his/her belief that Cameron's actions were retaliatory. Crow was entitled to characterize Cameron's actions and could consider Cameron's action against Student E as retaliatory.

¶148 Furthermore, Cameron is incorrect in asserting that Crow arbitrarily dismissed the evidence from Students A, E, and F. Crow's review of the evidence disclosed no basis to conclude that any of these other students had observed the relevant exchange.

B. The Superior Court Did Not Abuse its Discretion in Affirming the Choice of Sanction.

¶149 Cameron also challenges ASU's decision to dismiss her in lieu of imposing a lesser sanction through the post-tenure review process.⁷ As a threshold matter, she contends that ASU's decision is "shocking to one's sense of fairness" under *Petras v. Ariz. State Liquor Bd.*, 129 Ariz. 449, 452, 631 P.2d 1107, 1110 (App. 1981). The Arizona Supreme Court has recently

⁷ We reject ASU's assertion that Cameron failed to preserve this issue in the superior court. Throughout this case, Cameron has maintained that Crow erroneously rejected CAFT's recommendations, which called for actions short of dismissal. For example, Cameron complained in her superior court opening brief that Crow reversed CAFT's determination that "dismissal was excessive and therefore inappropriate."

explained in *Maricopa County Sheriff's Office v. Maricopa County Emp. Merit Sys. Comm'n*, that the "shocking" standard was an "imprecise attempt at further defining the 'arbitrary and without reasonable cause' standard." 211 Ariz. 219, 223, ¶ 20, 119 P.3d 1022, 1026.

¶150 Rather, courts must apply the objective standard of A.R.S. § 12-910(E) and reverse if "the action is not supported by substantial evidence, is contrary to law, is arbitrary and capricious or is an abuse of discretion." *Coplan v. Ariz. State Bd. of Appraisal*, 222 Ariz. 599, 602, ¶ 8, 218 P.3d 1056, 1059 (App. 2009) (upholding the board's discipline of a licensee). Moreover, this court will not disturb an agency's choice of penalty absent a clear abuse of discretion. *Id.* at 603, ¶ 12, 218 P.3d at 1060 (citations omitted). In other words, we will affirm an agency's choice of discipline so long as it falls within the permissible range of sanctions and the evidence reflects that the party committed sanctionable conduct. *Maricopa County Sheriff's Office*, 211 Ariz. at 222-23, ¶ 16, 119 P.3d at 1025-26. Under such circumstances, a sanction is unlikely to be arbitrary or without reasonable cause. *Id.*

¶151 In addition, we note that "[v]arious courts have expressed their reticence to intervene in academic decision making by a university concerning the retention of teaching personnel." *Carley*, 153 Ariz. at 464, 737 P.2d at 1102. Such

reluctance stems from "the belief that such decisions are best made by those who have expertise in education." *Id.* (citations omitted).

¶52 As explained previously, ABOR Policy 6-201(J)(1)(a) and (b) expressly authorize termination for "just cause," which includes "dishonesty in professional activities related to teaching." Substantial evidence supports the finding that Cameron committed plagiarism as defined by ABOR and the University, and this conduct in turn qualifies as dishonesty in teaching-related professional activities. Accordingly, the dismissal sanction was not arbitrary or without reasonable cause.

II. The Exclusion Of Cameron's Plagiarism Expert Did Not Deprive Her Of Due Process.

¶53 Cameron also challenges CAFT's decision to exclude testimony from her plagiarism expert, Dr. Daniel Wueste ("Wueste"), at its hearing. CAFT reasoned that Wueste's "proposed testimony [did] not appear to be relevant to the issues before the committee." According to Cameron, this decision deprived her of due process notwithstanding her property interest in her job and her liberty interest in continued employment.

¶54 To substantiate a violation of procedural due process, Cameron must prove a denial of "the opportunity to be heard 'at

a meaningful time and in a meaningful manner.'" *Comeau v. Ariz. State Bd. of Dental Exam'rs*, 196 Ariz. 102, 106-07, ¶ 20, 993 P.2d 1066, 1070-71 (App. 1999) (quoting *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976)). Cameron does not dispute that ASU followed the dismissal hearing procedures.

¶155 Cameron instead rests her argument on the exclusion of Wueste's testimony and claims that she was not allowed the opportunity to present her own evidence on what constitutes plagiarism as it "is universally understood and applied in academia." Such an opportunity was required, she contends, because CAFT also relied upon the American Association of University Professors' ("AAUP") Statement concerning the complexities and shades of difference inherent in attributing sources.⁸

¶156 As Cameron acknowledges, the Rules of Evidence do not apply in an ABOR proceeding. Consequently, CAFT had "exceptional discretion" to determine whether a witness could provide expert testimony. See *Lathrop v. Ariz. Bd. of Chiropractic Exam'rs*, 182 Ariz. 172, 181, 894 P.2d 715, 724

⁸ The University cited the AAUP Statement on Plagiarism in its April 10, 2007 correspondence with Cameron and in the September 7, 2007 notice of dismissal, yet did not rely upon the statement as evidence of the standard of care at the hearing. There, CAFT consistently focused upon whether ABOR and the University's plagiarism standards were violated. The University mentioned the statement in its written closing argument only as authority for the damaging impact of plagiarism, not as a basis for the standard of care.

(App. 1995) (recognizing the agency's ability to conduct a hearing without adhering to the rules of evidence); A.R.S. § 41-1092.07(F)(1) (Supp. 2010) ("A hearing may be conducted in an informal manner and without adherence to the rules of evidence required in judicial proceedings.").

¶157 The exclusion of Wueste's evidence did not deprive Cameron of due process by precluding her from presenting a defense. Both Cameron and Pijawka presented testimony to CAFT. As detailed previously, Pijawka testified that syllabi are not scholarly works and have no real substance. Cameron also disputed that a syllabus can provide the basis for a plagiarism charge. Unlike Cameron and Pijawka, Wueste had never been a professor at the University and thus his testimony regarding the "larger academic world" would not likely have been helpful or persuasive to CAFT.

¶158 In any event, CAFT and Crow were qualified to evaluate whether Cameron had violated ABOR and the University policy without the assistance of Wueste. See A.R.S. § 41-1062(A)(3) (2004) ("The agency's experience, technical competence and specialized knowledge may be utilized in the evaluation of evidence."); see also *Lathrop*, 182 Ariz. at 181, 894 P.2d at 724 (holding that three chiropractors sitting on a board could rely upon their own expertise in resolving the case's medical issues). To the extent that ASU relied on the AAUP Statement on

Plagiarism, CAFT and Crow were equally equipped to interpret the standard without Wueste's aid. See A.R.S. § 41-1062(A)(3); *Lathrop*, 182 Ariz. at 181, 894 P.2d at 724. In light of this record, we cannot say that the exclusion of Wueste's evidence deprived Cameron of due process or amounted to a clear abuse of discretion. We accordingly decline to reverse on this basis.⁹

III. The Superior Court Did Not Abuse Its Discretion In Excluding The Arntzen Documents.

¶159 Cameron also challenges the superior court's failure to incorporate documents concerning Arntzen into the administrative record under A.R.S. § 12-910(B) (2003). We review *de novo* the superior court's interpretation of the statute. *Shaffer v. Ariz. State Liquor Bd.*, 197 Ariz. 405, 408, ¶ 8, 4 P.3d 460, 463 (App. 2000).

¶160 The administrative record consists of exhibits "admitted as evidence at the administrative hearing." A.R.S. § 12-904(B)(3). Although Cameron obtained the Arntzen documents during the CAFT hearing, she did not move for their admission at the administrative stage or question a witness about them. Consequently, even though CAFT had received the materials under seal, it never ruled on their admissibility and did not include

⁹ Cameron also alludes to the fact that the hearing on her dismissal appeal was not held within 45 days of her notice of appeal pursuant to ABOR 6-201(L)(4)(a). Cameron did not raise any objections with CAFT and in fact asserted that she "has not had sufficient time to adequately prepare for the Dismissal hearing."

them in the administrative record or supplemental administrative record. When Cameron attempted to use the material in her written closing argument over ASU's objection, she never responded. We affirm the finding that the administrative record did not include these documents. See *State v. Wilson*, 200 Ariz. 390, 394 n.2, ¶ 9, 26 P.3d 1161, 1165 n.2 (App. 2001) (holding that the appellate record did not include videotapes that were never offered as exhibits or viewed or considered by the court).¹⁰

¶61 Nor can we agree that the superior court misapplied A.R.S. § 12-910(B) in denying Cameron's motion to supplement the administrative record with the Arntzen documents. The statute provides:

Relevant and admissible exhibits and testimony that were not offered during the administrative hearing shall be admitted, and objections that a party failed to make to evidence offered at the administrative hearing shall be considered, unless either of the following is true:

1. The exhibit, testimony or objection was withheld for purposes of delay, harassment or other improper purpose.
2. Allowing admission of the exhibit or testimony or consideration of the

¹⁰ As ASU points out, any misunderstandings Cameron may have harbored as to the contents of the administrative record were dispelled by ASU's objection on May 8, 2008, when she first attempted to use the materials in her written post-hearing summation.

objection would cause substantial prejudice to another party.

¶162 Accordingly, the threshold question was whether the evidence to be included is relevant and admissible. *Id.* Rule 401 provides that evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Ariz. R. Evid. 401.

¶163 In this case, Cameron sought the Arntzen material to support an alleged prosecution and punishment in violation of her equal protection rights. The elements of that claim include: (1) absence of action against others similarly situated to Cameron, and (2) selective action against Cameron was based upon impermissible grounds, *State v. Montano*, 204 Ariz. 413, 428, ¶ 78, 65 P.3d 61, 76 (2003), such as "an unjustifiable standard such as race, religion, or other arbitrary classification." *Bordenkircher v. Hayes*, 434 U.S. 357, 364 (1978) (citation omitted). A mere claim of failure to prosecute all offenders supplies no basis for relief on an equal protection claim. *Oyler v. Boles*, 368 U.S. 448, 456 (1962).

¶164 ASU contends that the Arntzen materials are not relevant to the equal protection claim. This evidence reflects that Arntzen, a male Caucasian professor, had denied authoring credit for text originally written by a graduate student on his

research team. After the student complained, Arntzen contacted the editor and asked him to add the student's name. The case involved an isolated incident, as opposed to repeated violations of the plagiarism policy, and did not result in Arntzen's termination.

¶165 Even if we found the Arntzen case materials had some relevance to the equal protection claim, Cameron stipulated that issues of race, gender, and disability were not part of the administrative proceeding. Furthermore, admitting the material after the CAFT hearing would be substantially prejudicial to ASU because the latter received no opportunity to create a record at the CAFT hearing with respect to the evidence. See A.R.S. § 12-910(B)(2). Accordingly, we find no error with the superior court's refusal to supplement the administrative record with this evidence.

IV. Cameron Was Not Entitled To Complete the Post-Tenure Review Process Prior to Her Dismissal or Receive a "Name-Clearing Hearing."

¶166 Finally, Cameron contends that before ASU could terminate her employment for performance-related issues, it was required to first conduct a post-tenure review procedure and afford her a name-clearing hearing.

¶167 ABOR 6-201(J)(1)(b) affords a process by which a tenured faculty member can demonstrate improvement before dismissal is considered. The post-tenure review process, as

detailed in ACD Manual 506-11, consists of six steps. It includes the creation and implementation of a performance improvement plan to address deficiencies, ABOR 6-201(H)(1)(c), with a recommendation for dismissal made only after the individual fails to achieve the goals outlined in a timely manner. ABOR 6-201(H)(1)(d). The introduction to the ACD Manual 506-11 addresses this eventuality:

If an individual's performance becomes unsatisfactory, the faculty member has a responsibility, shared with the university, to improve performance. Every attempt should be made to support the faculty member in this performance improvement. Only after the improvement process has clearly failed should dismissal be considered.

¶168 The post-tenure review process is designed to ensure accountability through emphasis on sustained high quality performance and opportunities for continued faculty development, as well as to provide additional accountability to the university community, the public, and the board. ABOR 6-201.H. As Reiter explained, post-tenure review "is for adjustments of performance. It doesn't deal with the issue of plagiarism."

¶169 The University initiated Cameron's post-tenure review process before it became aware of the academic dishonesty, retaliation, and course evaluation issues. It did not complete the process. CAFT then concluded that the post-tenure review issues were moot.

¶170 The ABOR policies do not state that the University must follow post-tenure review process through to completion once initiated, regardless of intervening circumstances, such as identification of repeated instances of conduct sanctionable by termination under ABOR 5-301 and ABOR 5-503. What the ABOR policies do provide is a basis for distinguishing grounds for dismissal based upon unsatisfactory teaching performance, which includes six steps for remediation, from misconduct charges triggering the for cause termination procedures. ASU complied with the just cause termination procedures.

¶171 Accordingly, we conclude that Cameron is not entitled to use the post-tenure process as a shield to insulate herself against procedures for independent misconduct outside the purview of that process. Once ASU ascertained grounds for termination, it properly concluded that any post-tenure review was moot.

¶172 Cameron also contends that she was entitled to a "name clearing hearing." When a dismissal is based upon dishonest conduct, an employee's liberty interest in continued employment, secured by the Due Process Clause, may be implicated. *Bd. of Regents v. Roth*, 408 U.S. 564, 573-74 (1972). In order to prove damage to this interest, "the stigmatizing information must be made public by the offending governmental entity." *See, e.g., Rich v. Sec'y of Army*, 735

F.2d 1220, 1227 (10th Cir. 1984) (finding no infringement of a protected liberty interest because the plaintiff publicized his homosexuality and the circumstances of his termination). Placement of stigmatizing information in a personnel file may suffice if the public has access to it. *Cox v. Roskelley*, 359 F.3d 1105, 1109 (9th Cir. 2004).

¶73 Cameron's dismissal was based in part on dishonest conduct. She is not entitled, however, to a name-clearing hearing. The record reflects that Cameron requested that the hearing be public and publicized her case in the press on August 13, 2008. Moreover, the name-clearing cases cited on page 47 of her Opening Brief are distinguishable: the employees in those cases received neither a pre-termination nor a post-termination hearing.¹¹ *See, e.g., id.*

¶74 We conclude on this record that Cameron was not entitled to the post-tenure or name-clearing hearings. She received a two-day hearing from CAFT, in which she was represented by counsel, and exercised her rights to present evidence, cross-examine witnesses, and present a closing argument. We find no due process violation, and uphold the decision denying Cameron's grievance and her dismissal. *See*

¹¹ Cameron contends that a clear and convincing standard of proof should have applied at the name-clearing hearing. Assuming, without deciding, that a clear and convincing standard of proof applied, the plagiarism evidence presented to CAFT would support a plagiarism finding under that standard.

Newman v. Burgin, 930 F.2d 955, 960 (1st Cir. 1991) (finding no due process violation because the professor accused of plagiarism had the opportunity to present her version of the facts, challenge the decision makers for bias, call witnesses, criticize the evidence, and raise arguments); *Agarwal*, 788 F.2d at 508 (finding that a tenured professor received notice of the charges, was represented by counsel, and exercised his rights to present evidence and to call and cross-examine witnesses).

CONCLUSION

¶75 We affirm the superior court's judgment in all respects and deny Cameron's request for attorneys' fees on appeal.

_____/s/_____
JOHN C. GEMMILL, Judge

CONCURRING:

_____/s/_____
PATRICIA K. NORRIS, Presiding Judge

_____/s/_____
PATRICIA A. OROZCO, Judge