

# **Duquesne University**

## **University Grievance Committee for Faculty**

### **Report:**

### **Shank Case**

1/14/2021

Consistent with Section 10.7 of the Faculty Handbook, this report describes the investigation of Dr. Shank's grievance. The University Grievance Committee reviewed the grievance and other related documents submitted by Dr. Shank and the respondents. In addition, the Committee conducted interviews and a hearing. This report presents the Committee's findings and recommends that Dr. Shank be restored as a faculty member of Duquesne University.

### **Facts:**

#### ***The Incident:***

Dr. Shank, an expert in educational psychology, is a full Professor in the School of Education. On Wednesday, September 9, 2020, Dr. Shank was teaching Educational Psychology LTFL 206. One of the topics of the lecture was "Major Cultural Differentiators" with a focus on class, race and ethnicity. During class Dr. Shank called on students to answer questions about various aspects of the topic. When the discussion turned to race, Dr. Shank asked whether "there was a powerful interaction between Whites and African Americans". Dr. Shank went on to state that there had been "interesting progress" in race relations since he was a young man and that he was giving the class permission to "use the word" in a pedagogical sense. "What is the one word about race that we are not allowed to use?" None of the students responded to the question. Then Dr. Shank said, "I'll give you a hint, it starts with N". Dr.

Shank then said he would use the word only to "illustrate a point" and then stated that the word was N\_\_\_\_. Dr. Shank then gave three examples of racist speech that were inherently offensive and degrading to African Americans that included the N-word. His point was that the use of those and other racist epithets had been common and accepted when he was young, but were now socially unacceptable; therefore, there had been progress in race relations. Dr. Shank then went on to discuss key cultural characteristics of ethnicity until the class ended.

***The Response:***

Following class, a student complained to their undergraduate advisor about Dr. Shank's use of the n-word, and another student complained directly via email to Dr. Shank. Additionally, a student filed a University EthicsPoint complaint. Wednesday afternoon, Dr. Shank had a Zoom meeting with the acting Dean of the School of Education, Dr. Generett and the Department Chair, Dr. Gibbs Kanyongo to discuss the complaints that had been received. During the meeting Dr. Shank wrote an apology to the class for "crossing the line" which he sent via email. On September 10th, Dean Generett sent an email to the class where she expressed her view "that there was never a time, pedagogically or otherwise, for a professor to use language that creates a hostile learning environment.", and that using the "N word" or encouraging students to use the word was not in keeping with the mission of the University, the School of Education, or the Pennsylvania Department of Education. By Friday September 11th, video clips from the class were circulating on social media.

On Friday, September 11, Dr. Shank devoted the entire class to the concerns that were raised by his use of the N-word. He first apologized and took full responsibility for what happened in the prior class and for not "meeting the needs" of the class. He then invited the class to comment and enter into a discussion.

Dr. Shank stated that it was legitimate for the class to still be upset and he wanted to "help repair the situation". Towards the end of the class, Dr. Shank engaged in dialog with a black student who ultimately stated that the relationship between Dr. Shank and himself could be repaired.

Later that day, Dean Generett after consulting with Provost Dausey and Mr. Ryan Dawson from Human Resources determined that Dr. Shank should be placed on paid leave pending further investigation of the incident. Dr. Shank was formally notified of the suspension that evening. On September 12th, President Gormley sent an email to the Duquesne University community apologizing for the incident and anticipating that the professor would face "very strong disciplinary action pursuant to the procedures set forth in our Faculty Handbook". On September 14th, the Faculty Senate Executive Committee issued a statement of concern over the incident and affirming the commitment of the faculty to "ensuring that racial disparities and injustices are eliminated from our campus community".

Dean Generett, without success, made several efforts to contact Dr. Shank on September 14 to obtain a formal statement from him. Dean Generett was successful in reaching Dr. Shank on the 15th and a Zoom meeting was scheduled for later that morning. However, prior to the meeting Dr. Shank sent a text message stating that he would be unwilling to meet without legal representation. On September 15th, Provost Dausey sent Dr. Shank a letter notifying him that the University intended to proceed with removing his tenure and offered Dr. Shank the opportunity to resign. Subsequently, Dr. Shank received a letter from Dean Generett dated October 5th claiming "serious misconduct" on his part and that she was recommending to the Provost that he be terminated. The grounds for termination were:

- 1) a failure to observe the principles of the Mission Statement of Duquesne University or elaborations thereof approved by the Board of Directors
- 2) a failure to observe specific University policies that address discrimination
- 3) a failure to treat students fairly, honestly, and with respect
- 4) a failure to maintain the standards of professional conduct articulated in the TAPs or the Faculty Handbook.

Dr. Shank received a letter of termination from Provost Dausey dated October 7th. The letter also stated that Dr. Shank could appeal the termination by filing a grievance with the University Grievance Committee for Faculty within 30 days of receipt of the letter.

***The Grievance:***

Professor Shank filed a grievance with the University Grievance Committee for Faculty on November 5th. Provost Dausey, Interim Dean Generett, Dr. Kanyongo, Interim Department Chair, and President Gormley were named as respondents.

The specific charges made in the grievance against the respondents were:

1. Violation of Dr. Shank's academic freedom

2. Defamation of Dr. Shank's professional standing and reputation by respondents through their public statements resulting in substantial financial harm.

The resolution sought by the grievant:

1. Per 10.5 of the Faculty Handbook: An investigation that includes a hearing by persons that are impartial, and without pre-conceived ideas regarding the facts in issue.

2. Full reinstatement with no conditions, backpay and benefits, and reimbursement for all legal fees and expenses as a result of wrongful termination.

Moreover, the grievant objected to two provisions of the Faculty Handbook:

1. Section 10.6 - The grievant bears the burden of proving there has been a violation of policy, procedures, or established practice. The standard of proof is a preponderance of the evidence.

2. Section 10.7 - Each faculty member may have an advisor of his/her choosing present at the hearing. An attorney may act as an advisor, but an advisor does not have the right to act as legal counsel, to speak on behalf of the faculty member, or to question either the other parties or the witnesses.

Dr. Shank also objected to President Gormley as the final arbiter of the case due to perceived bias against him.

## **Findings:**

*Did Dr. Shank engage in serious academic misconduct during his lecture on September 9, 2020?* **Yes.** During a 50-minute lecture on cultural diversity, Dr. Shank spent six and a half minutes discussing how there had been progress in the language of race relations between Whites and African Americans over his lifetime. The example he chose to illustrate this progress was the N-word; the most offensive insult used against African Americans in contemporary American culture. Rather than using the euphemism "N-word" he used the word itself. He prepared the class for the use of the word by saying that he was personally uncomfortable using it, but that in a "pedagogical" context it was okay. Moreover, during the discussion of the term in class, it was okay for the students to use the word as well. Dr. Shank then presented three racist epithets to illustrate the use of the word and pointed out that such epithets today would be socially unacceptable, while their earlier use was common. Following this **brief** discussion of race and the N-word, Dr. Shank went on to discuss the characteristics of ethnic culture. During his interviews with the Investigative Committee, Dr. Shank emphasized the need when teaching sensitive topics for "careful preparation" prior to discussion and "debriefing" following the discussion to place the topic in proper context and to facilitate learning.

During his interview, Dr. Shank stated that he used the word itself rather than a euphemism because he felt that abstraction lessened the student's appreciation for the full impact of the word and use of the word itself would promote learning on a visceral level rather than mere cognitive learning. Unfortunately, Dr. Shank did not share this rationale in his preparation of the students for the use of the word, nor did he explain why he wanted to use the N-word as an example of cultural progress for racial reconciliation rather than some other less offensive example.

Moreover, in his lack of adequate preparation for discussion of the N-word, Dr. Shank displayed an especially callous indifference to the sensitivities of the students of color in the class. Rather than "debriefing" the class immediately, Dr. Shank went directly into discussion of another topic thereby delaying the debriefing until the next class, two days later (and after he had been made aware of the impact of his lecture by Interim Dean Generett and Dr. Kanyongo). In the meantime, students who were shocked and dismayed by Dr. Shank's use of the N-word reacted by sharing their concerns with others including fellow students, faculty, administrators and social media.

Dr. Shank's failure to adequately prepare his class for a serious discussion of a highly offensive and inflammatory word without abstraction, and his delayed debriefing for two days was unprofessional, disrespectful to the students and a violation of TAP 55 that addresses ethical, respectful and professional conduct.

***Did the University violate Dr. Shank's academic freedom?***

**No.** Duquesne University does not subscribe to the AAUP guidelines on academic freedom. The 2020 revision of the Faculty Handbook defines academic freedom with respect to teaching as:

**3.2** Academic freedom is essential to teaching and to discussing the material that one teaches. However, faculty members shall not, when teaching, persistently intrude unrelated opinion or material with no relevance to the subject being taught.

**3.4** Academic freedom carries with it responsibilities in addition to rights. It does not remove from a faculty member the duty to comply with stated rules and policies of the University and its constituent academic units, including policies and procedures with respect to teaching,

teaching assignments, curricula, syllabi, grading, the evaluation of teachers and students, academic integrity, committee service, harassment, discrimination, and professional behavior. Disagreements about the balance between academic freedom and University rules and policies shall be subject to the processes in this Handbook regarding grievances.

To the extent that Dr. Shank violated TAP 55 with respect to his teaching on September 9, 2020, the University did not violate Dr. Shank's academic freedom by suspending him from teaching or by his termination.

***Did the University fail to provide due process to Dr. Shank prior to his suspension and termination?***

**No.** The section of the 2020 revision of the Faculty Handbook dealing with a faculty member's termination of tenure and dismissal states:

**9.2** In the event of the proposed dismissal of a tenured faculty member, the faculty member is entitled to a hearing by the University Grievance Committee for Faculty. That hearing, the committee's subsequent recommendations and the President's final decision shall be conducted in accordance with the provisions of this Handbook.

**9.3** A faculty member may appeal any disciplinary action to the University Grievance Committee for Faculty. During the pendency of any appeal, no sanction may be enforced unless the failure to do so (a) would constitute a breach of the University's legal obligations, (b) would entail the creation or continuation of a risk of danger to the faculty member concerned or other



members of the University community, or (c) might result in egregious harm to the reputation of the University.

Prior to Dr. Shank's termination, Interim Dean Generett sought to meet with Dr. Shank to formally discuss the incident and provide an opportunity for Dr. Shank to explain his actions. Dr. Shank refused to meet without the presence of his attorney. Applying clause (c) of 9.3, the University enforced the sanctions against Dr. Shank prior to completion of the appeal process.

Dr. Shank was provided the opportunity to appeal the disciplinary actions by the University to the University Grievance Committee for Faculty (UGCF). In addition, it is our understanding that Dr. Shank continues to receive compensation. The investigative subcommittee of the UGCF conducted an investigation, including a hearing with the respondents, consistent with Faculty Handbook section 10.

***Should President Gormley recuse himself as the final arbiter of the case?***

**No.** As the President of the University, Dr. Gormley had a responsibility to mitigate the damage to Duquesne's reputation resulting from the worldwide dissemination of video clips of the incident on social media as well as reporting by traditional media outlets. In his email to the Duquesne community, President Gormley quoted from Dean Generett's letter to the students in the class and also stated:

"The professor breached the trust of his students and the University with his actions and, as such, will face very strong disciplinary action pursuant to the procedures set forth in our Faculty Handbook. His breach is particularly painful in its connection to the ugliness of racism and its systemic and enduring corrosive effects in our nation and our region."

While the statement appears to prejudge the President's role in the case as an arbiter, it is consistent with statements that Dr. Shank himself made to the class in his apology:

"I used the term that I now realize was deeply troubling to the class. It was not my intent to do so, but I must take responsibility for my words and teaching. As a consequence, I am offering each and every one of you my most sincere apology and my guarantee that I will never cross this line again in our class."

And the apology Dr. Shank made to one of the students in the class:

"I agree that this term is very offensive and I accept your suggestion to never use it again in any context. I am also sorry that this made you and others uncomfortable. I take responsibility for using it."

While President Gormley's letter did state that Dr. Shank "will face very strong disciplinary action pursuant to the procedures set forth in our Faculty Handbook" which suggests bias, he was not involved in the investigation of the case, nor the decision to terminate Dr. Shank. Moreover, President Gormley assured the investigative subcommittee that he had an open mind regarding the disposition of the case and that the UGCF should be forthright in making its recommendations.

Finally, regarding the report of the UGCF investigation, section 10.7 of the Faculty Handbook states, "the President shall decide to accept, reject, or modify its recommendations, notifying in

writing the chair of the committee and all parties to the grievance." The Faculty Handbook does not provide for an alternative to the President as the arbiter of the case.

***Was the termination of Dr. Shank's tenure and dismissal warranted?***

**No.** Dr. Shank exercised extremely poor judgment in his decision to use the N-word rather than an abstraction as an example of progress made in race relations. This was especially true given the current racial climate in the country brought about by the high-profile killings of African Americans. In addition, Dr. Shank was negligent by failing to provide adequate preparation and context for his use of that word and for delaying two days to debrief the class and mitigate the visceral negative responses that he had deliberately provoked in the class. Aside from the distress he caused the students, his actions negatively affected the reputations of the School of Education and the University.

Section 9.2 of the Faculty Handbook states, " Faculty members **may** be dismissed and, where relevant, their tenure forfeited for reasons of serious misconduct or professional incompetence." (emphasis added). While Dr. Shank's performance during the six- and one-half minutes of the class was inappropriate and unprofessional, it should be kept in mind that this was a single brief episode rather than a continuing pattern of disrespect toward students. While from time-to-time students have complained about Dr. Shank over the course of his more than twenty years of employment at Duquesne, the complaints had nothing to do with race.

This is the first time Dr. Shank has been formally disciplined. While Dr. Shank's use of the N-word was misguided, it was not malicious. Therefore, while sanction of Dr. Shank's behavior is warranted, it does not reach the level requiring dismissal.

**Recommendation:**

The University Grievance Committee for Faculty recommends that Dr. Shank be restored as a faculty member of Duquesne University.