

6/9/09

TULANE UNIVERSITY

As described in the report of five institutions investigated by the Association's Special Committee on Hurricane Katrina and New Orleans Universities, the hurricane's substantial flooding did not prevent Tulane University's uptown campus from reopening within four months, in January 2006. The medical school and university hospital, located downtown, were flooded much more extensively and could not fully reopen until the following autumn.

Tulane's governing board on December 8, 2005, declared a state of financial exigency. Notifications of release were issued the next day to approximately two hundred faculty members, the majority of whom held clinical appointments in the medical school. Among the two hundred were fifty-eight with tenure, thirty-four of them in the medical school and the remaining twenty-four in two uptown schools: eighteen in engineering and six in business.

The Association's investigation found that the vice president for health sciences made the medical school decisions on termination, often without having informed the affected professor's department chair and without having taken tenure into consideration. Only one of the affected medical school professors pursued his case to a grievance, with the school's grievance committee deciding that evaluation of the criteria for termination was beyond its scope. A second grievance, emanating from the engineering school, eventually also failed. The members of the largest department being discontinued, mechanical engineering, filed a complaint with the senate's Committee on Faculty Tenure, Freedom, and Responsibility, asserting that the department was financially self-sustaining. The senate's committee, essentially agreeing, found that the discontinuance could not be justified on financial grounds. The matter then went to the governing board, which held its own hearing and then concurred in the administration's position.

The AAUP investigators concluded that the Tulane administration acted in disregard of the 1940 *Statement of Principles on Academic Freedom and Tenure* and derivative AAUP-recommended standards by declining to provide reasons for terminating particular programs and faculty appointments and, in releasing professors, by making no distinction, except for amount of notice, between tenured and nontenured faculty members. Censure was imposed by the 2007 annual meeting.

Reacting to the critique in the investigating committee's report of several Tulane policies and procedures, the university senate charged an *ad hoc* committee with examining them and proposing modifications. The university president did not object to the undertaking but did indicate reluctance to ask the Tulane board to change the official provisions on financial exigency before the existing state of financial exigency had been brought to closure. The senate's committee proceeded to formulate a document of "interim" revisions, which the full senate approved at a meeting in October 2007. The revisions provide for an enhanced faculty role at the various decision-making stages in the financial exigency policy. They emphasize the need to protect tenure and in particular to proceed from nontenured to tenured faculty in determining the order of layoff. On the matter of relocation to another position, they specify that released tenured faculty members would have a preference over outside candidates. More needs to be said about relocation, however, and Committee A proposes to the senate that it give this provision of the revised policy further attention.

The governing board acted two months later to bring the university's state of financial exigency to an end. In fall 2008, it formally adopted the revised policy, and its provisions were incorporated into the faculty handbook.

Issues of redress still required attention. Tulane's president, who until then had declined to engage in substantive discussion with the Association about its investigation and censure, stated at a February 2009 meeting of the university senate that he would be receptive to a call from the AAUP to discuss what needed doing in order to have the censure removed. The AAUP staff proceeded to talk with him about a professor from the discontinued mechanical engineering department who had consulted with the Association from time to time about the lack of a satisfactory remedy for terminating his tenured appointment. The staff, having no evidence that the professor had been treated any differently from the others in mechanical engineering, proposed that the professor be offered a relatively modest sum as a gesture of redress. The president agreed to do so, and the professor, who initiated litigation, countered with a statement that he would consider accepting a very much larger sum. The professor has apparently not rejected a smaller sum, and the president has stated that he supports continuing discussion through the attorneys of a potential settlement. Committee A's good offices will remain available for assisting the parties in reaching a satisfactory resolution.

The AAUP staff learned in March that the only professor in a discontinued program in the school of business who had not promptly relocated elsewhere or accepted a buyout was joining the engineering professor in wanting the AAUP censure to continue. After her tenured appointment was terminated in June 2007, she filed complaints successively with Tulane's Office of Institutional Equity, alleging discrimination, and with the business school's faculty grievance committee, alleging procedural and substantive flaws in the action to release her. Both bodies rejected her appeals. Beginning in late spring 2008, she talked with successive chairs of the Committee on Faculty Tenure, Freedom, and Responsibility about a review by that body of the rejection of her two appeals. This March she wrote to ask that the review be undertaken, and the committee agreed to proceed. At her request, the AAUP staff talked with the Tulane president to inform him that she had consulted with the staff and to convey the AAUP's expectation that the administration would cooperate with the reviewing committee. The committee agreed to requests from her, which the AAUP staff supported, that it hold a hearing at which she could have counsel and could be present during the testimony of her adversaries. The hearing was held on May 5, and on May 14 the committee issued its decision, finding no grounds for recommending any further action at Tulane University on her complaints but calling on the senior administration to take steps to improve the climate in the business school for female faculty and for faculty participation in governance.

On March 3, the Tulane AAUP chapter voted to endorse removal of the censure, stating it was unaware of any problem at the university that warrants its continuance. At an April 7 meeting of the university senate, with the large majority of its forty-two elected faculty members participating, the senators voted without dissent to request censure removal. The possibility of censure removal at Tulane had been discussed on April 4 at the spring 2009 meeting of the Louisiana AAUP Conference, with both the former engineering professor and the former business professor in attendance. The conference executive committee subsequently wrote in support of censure removal, stating that "all reasonable efforts" had been made to resolve the cases of the two professors to the executive committee's satisfaction.

Committee A commends the faculty of Tulane University, the Tulane University AAUP chapter, and the Louisiana AAUP conference for engaging actively with the

Tulane administration on the improvement of the university's regulations. The committee notes the receptivity of the Tulane University administration to the Association's concerns. Committee A is pleased that in substantial respects the regulations of Tulane University involved in the events giving rise to the imposition of censure have been brought into compliance with Association-supported standards.

A decision of Committee A to recommend removal of Tulane University from the censure list will be made with the expectation of the administration's taking positive steps as proposed by the faculty review committee in May 2009 with regard to exploring and enhancing the environment in the business school for female faculty and for faculty participation in governance. Committee A stands ready to provide advice and assistance in these matters.

In addition, a Committee A recommendation to remove censure will be made without prejudice to any litigation by faculty members stemming from layoffs in the aftermath of Hurricane Katrina. Committee A has requested the agreement of the administration, in any litigation, not to rely upon the removal of censure by the AAUP or to refer to any redress gesture discussed in the course of that decision. Discussion with the administration of its response to the request is still in process, however.

Committee A does not believe the censure should be removed before a suitable response has been obtained from the administration regarding the use of censure removal in any litigation. The committee hopes that the matter will be resolved fairly promptly. It recommends to the Ninety-fifth Annual Meeting that the committee be delegated the authority to remove Tulane University from the Association's list of censured administrations once the committee has determined that a suitable response has been provided.