

# Academic Freedom and Tenure: Community College of Aurora (Colorado)<sup>1</sup>

(MARCH 2017)

This report concerns actions taken by the administration of the Community College of Aurora, during the fourth week of the fall 2016 semester, to terminate the appointment of part-time instructor of philosophy Nathaniel Bork without affordance of academic due process.

## I. The Institution

The Community College of Aurora, with campuses in the Denver suburb from which it gets its name as well as in Denver itself, was established in 1983 as part of the Colorado Community College System (CCCS). The college enrolls a diverse population of about 10,500 students annually, approximately 80 percent of whom are part time. According to the most recent figures available from the National Center for Education Statistics, these students are served by fifty-seven full-time and 310 part-time (adjunct) faculty members. The college's president is Dr. Elizabeth (Betsy) Oudenhoven, who took office in December 2013 after having served briefly as interim president and, prior to that, vice president for student services and enrollment management.

The college operates under the authority of the State Board for Community Colleges and Occupational Education, which governs all thirteen institutions in the community college system. The system's president is Dr. Nancy J. McCallin.

CCA has been accredited since 1988 by the Higher Learning Commission (HLC; formerly the North Central Association of Colleges and Schools). In October 2013, the commission acted to continue the college's accreditation until 2022–23, "with Interim Monitoring."

## II. The Case of Nathaniel Bork

Mr. Nathaniel Bork accepted his first appointment as an adjunct instructor of philosophy at CCA in January 2010, shortly after completing an MA in philosophy at Colorado State University. By fall 2016 Mr. Bork had served at the college for more than six years, teaching an array of courses in philosophy, ethics, and comparative religion but typically no more than one or two classes per semester. Mr. Bork also held an appointment as an adjunct instructor of philosophy at Arapahoe Community College in Littleton (another Denver suburb), where he continues to teach at least four courses a semester.

An advocate for adjunct faculty members, Mr. Bork was twice elected adjunct faculty representative to the CCA faculty senate, founded an adjunct faculty organization at the college, and worked to advance the rights of adjunct faculty members at his own institution and throughout the CCCS. Both faculty members and administrators interviewed by the undersigned investigating committee readily attested to Mr. Bork's largely positive recognition on the CCA campus for these efforts. Along with

1. The initial text of this report was produced by the members of the investigating committee. In accordance with Association practice, the staff then edited the text and submitted it, as revised with the concurrence of the investigating committee, to Committee A on Academic Freedom and Tenure. With that committee's approval, the staff sent the report to the subject faculty member, to the administration of the Community College of Aurora, and to other persons directly concerned. The final report, which has been prepared for publication with the editorial assistance of the staff, takes into account the responses received from these parties.

other leaders in Colorado's AAUP conference (Mr. Bork helped to found the AAUP chapter at CCA and served as its first president), he actively supported failed Colorado Senate Bill 15-094, which would have classified adjunct instructors as faculty members in the CCCS and given them the “same responsibilities, benefits, and freedoms of regular faculty.” Mr. Bork was featured, along with Colorado conference secretary-treasurer Suzanne Hudson and national AAUP second vice president Caprice Lawless, in several media accounts of the situation of adjunct faculty members in Colorado. Rocky Mountain PBS broadcast one such account, titled “Colorado Community Colleges Rely on Poverty-Level Instructor Workforce,” in March 2015. It shows, among other things, how some undercompensated adjunct instructors have come to depend on food banks to feed their families. The print version of the broadcast includes a picture of Mr. Bork with his seven-year-old daughter, captioned as follows: “Adjunct college instructor Nate Bork reads with his daughter. . . . Bork said he and his wife are ‘good at being poor.’ Bork said the couple has forgone a plumber to fix their broken kitchen sink and expensive genetic testing to diagnose their daughter’s developmental disability.”

In fall 2016 Mr. Bork was teaching one section of Philosophy 111, Introduction to Philosophy, at CCA. On September 13, during the fourth week of the semester, he received a phone call from Dr. Bobby Pace, chair of the Department of Social Sciences, and Dr. Ted Snow, dean of the School of Liberal Arts, notifying him that his appointment as an adjunct instructor of philosophy was to be terminated, effective the next day. (The philosophy program had been moved into the social sciences department and thus under the direction of Dr. Pace, effective July 1, 2016, as part of a program and administrative reorganization.) A letter from the director of human resources dated September 13 served as formal notification of his dismissal. The letter also informed him that, despite his severance from service, the college would pay him the total contracted amount of \$2,559 for the course, \$320 of which he had already received. As an explanation for the decision to terminate his appointment, the letter cited a “lack of effectiveness in implementing the philosophy curriculum redesign.” Mr. Bork would not receive a copy of the classroom observation reports upon which this determination was made until three weeks later.

Mr. Bork immediately sought the advice and assistance of his AAUP colleagues in the Colorado conference. In a September 14 e-mail message to them, he claimed that his appointment had been terminated not for the stated reason but, as he put it in the subject line of his message, “for writing a report to the HLC about CCA’s efforts to increase student success via lowering standards.”

The report in question was addressed to the Higher Learning Commission and conveyed Mr. Bork’s “deep concerns” about the college’s Gateway to Success initiative, which modified certain entry-level liberal arts courses (so-called “gatekeeper courses”) in an effort to improve their pass rates. In his report Mr. Bork specifically identified changes that he said he was required to make to Philosophy 111: a 20 percent decrease in overall course content; a reduction in writing assignments to an eight-page maximum for the semester; small group activities every other class session; and the inclusion of a larger percentage of material (the reported goal was 30 percent) produced by women and minorities. “We have to continue implementing new strategies,” Mr. Bork wrote, until they produce a “success rate” of 80 percent “for all student groups, as defined by race and gender.” While Mr. Bork did not challenge what he said was his department chair’s claim that these required changes were consistent with Colorado Department of Higher Education (CDHE) policies, he stated that they nevertheless violated the “spirit of the law” with respect to guaranteed transfer courses (general education courses taken in a Colorado community college that are transferable to the state’s four-year institutions). “Simply put,” he wrote, “this class is now much, much easier to get an A in or pass than it was previously. It’s now so much easier that currently every single student on my roster has an A+, and to my recollection the last time I was involved in a course set to this difficulty level, either as a teacher or a student, was early high school.” He continued, “If the people we’re giving A+s to in the [guaranteed transfer] courses are only doing the equivalent of high school work at other colleges, I believe that sets up our students for harm later on. Our student success rates will spike through the roof, but we’ll be graduating people who think they’ve received a college education, but in reality have only done high school level work. . . . And the harm from what I see as lack of rigor will become evident after they’ve left CCA and are forced to compete with their peers from other schools.” In his final paragraph, he asked the accrediting commission

to “review some of the new inclusive excellence policies at CCA.”<sup>2</sup>

To demonstrate that he was not alone in holding these views, Mr. Bork attached to his report a July 25 letter, addressed “to whom it may concern,” from fellow adjunct instructor of philosophy Dr. William Honsberger. Dr. Honsberger wrote that he had “taught in the field of philosophy for over thirty years,” the last eight of them at CCA, but had resigned from his teaching post at the college because he had come to believe that the mandated changes to Introduction to Philosophy were shortchanging students.

Mr. Bork advised the AAUP’s staff that he had shared his report with President Oudenhoven and with the vice president of academic affairs, Dr. Janet Brandau, on September 7.<sup>3</sup> Mr. Bork further advised the staff that he had not forwarded it to the HLC, which had sent a visiting team to campus at the end of October “to review the institution’s ongoing ability to meet the HLC’s Criteria for Accreditation.” Mr. Bork also informed the staff that, months before he shared the report with the president and vice president, he had sent an e-mail message to them and ten other recipients, including Chair Pace and Dean Snow, critiquing the Gateway initiative, inviting their response, and suggesting that he would be sending his final critique to the HLC.

The CCA administration did not afford Mr. Bork an opportunity to contest the dismissal or provide an

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2. In response to the staff’s invitation for comment on the draft report, the Colorado AAUP conference noted as follows: “Mr. Bork’s instructional approach quite arguably prepares students for a better shot at success when they transfer to Colorado’s four-year institutions. The CCA Gateway to Success protocol, a derivative of the state and national Pathways agenda, over-emphasizes completion and access at the expense of preparation and opportunity to succeed once CCA students arrive at Metropolitan State University of Denver, Colorado State University, the University of Colorado, and other four-year public higher-education institutions in Colorado. In essence, it prepares students for failure in the important transfer function the Gateway to Success program is meant (in part) to promote. . . . We would like to emphasize that Nate’s decision to opt for a more rigorous pedagogy is both responsible and beneficial from the perspective of four-year institutions that receive Gateway students.”

3. In the CCA administration’s response to the draft report, President Oudenhoven wrote, “I never received a report or letter from Mr. Bork to the HLC. . . . The academic vice president received an email from him on September 7, 2016, but I was not copied on that email. As far as we know there is no report. We were not concerned about him sharing his issues with the HLC in whatever way he chose to do so and dispute the charge of retaliation throughout the report.”

explanation for declining to do so. Nor did it initially elaborate on Mr. Bork’s stated “lack of effectiveness in implementing the philosophy curriculum redesign.” On October 4, however, the administration did provide Mr. Bork with a copy of his personnel file. It included two reports of observations of Mr. Bork’s September 9 Introduction to Philosophy class, one by Dr. Pace and the other by Mr. H. Ray Keith, an achievement coach in the College of Liberal Arts.<sup>4</sup> Both reports, on forms specifically designed to evaluate instructors’ success in implementing the new curriculum in gatekeeper courses, gave low marks to Mr. Bork’s performance. Dr. Pace’s report, which was the most critical, noted, “There was no content being presented during the observation period,” “the students did not appear to be properly instructed in the specific step[s] of the process,” “the students had not been given enough instruction, help, or guidance to effectively utilize the intervention,” and “students were woefully unprepared for the assignment.” Mr. Bork acknowledged to the AAUP’s staff that his students were frustrated, but, he stated, their frustration “was with the program and not” with him. “My students were aware,” he wrote, “of how I’d traditionally taught the class and the changes I was required to make, and they were frustrated with that.”

### **III. The Association’s Involvement**

On September 20, the AAUP’s staff wrote President Oudenhoven to convey the Association’s concerns about the case of Mr. Bork, citing Regulation 13, “Part-Time Faculty Appointments,” of the AAUP’s *Recommended Institutional Regulations on Academic Freedom and Tenure*, which provides that, “in a case of dismissal before the end of the term of appointment, the administration will set forth cause for the action, and the faculty member will have the right to a hearing before a faculty committee.” The letter stated that the AAUP “was concerned about the issues of academic freedom” raised by Mr. Bork’s allegation that he was dismissed because he had resisted changes to Philosophy 111 and had informed the

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4. According to a position description listed on the college’s website in January 2017, an achievement coach will “assist students in college readiness and academic success in specific schools, departments and programs within the Academic Affairs Division” and “execute all elements of a proactive student outreach strategy for students and staff.” “A bachelor’s degree in a field related to the position’s responsibilities” is a required qualification, along with “[d]emonstrated commitment to student academic success.”

administration that he intended to share his criticisms of those changes with the institution's accreditor. In closing, the staff's letter urged the president to reinstate Mr. Bork immediately and to comply with Regulation 13 in taking any further action against him.

The previous day, the state AAUP conference had independently sent a four-page letter to President Oudenhoven conveying the same concerns. That letter, sent over the signatures of conference copresidents Stephen P. Mumme and Jonathan Rees, urged Mr. Bork's reinstatement and recommended that CCA develop processes through which adjunct faculty members could participate in curriculum development and that "it move expeditiously to develop or extend due process protection to its substantial corps of adjunct faculty, in the absence of which any pretense to the general exercise of academic freedom at CCA is simply a mockery."

On September 20, President Oudenhoven responded to both the national AAUP and the Colorado conference in a two-sentence e-mail message acknowledging receipt of their letters and stating, "While I appreciate your concern, it is not our practice to discuss internal personnel matters."

In replying to President Oudenhoven by e-mail the next day, the AAUP's staff noted that most administrations, upon receiving a formal conveyance of concern from the AAUP, provided a "substantive response," even in cases that ultimately led to investigation and censure. In some instances, the staff wrote, "presidents are eager to cooperate in achieving a resolution that comports with normative academic standards." The staff closed by urging President Oudenhoven "to address the issues of academic freedom and due process that Mr. Bork's case raises," adding that it was likely that Mr. Bork would not object to the administration's sharing his "relevant personnel information" with the AAUP.

Mr. Bork, who was copied on this message, immediately e-mailed President Oudenhoven requesting to be sent "any and all materials" in his personnel file, which resulted in his being provided these materials on October 4, as previously noted. President Oudenhoven, however, did not respond to the staff's message. On October 17, the staff wrote again to inform her that the Association's executive director had authorized this investigation, concluding by emphasizing "the Association's receptivity in this case, as in all others, to resolutions of our concerns that would preclude the necessity of the investigation now authorized."

The undersigned investigating committee visited Aurora December 2–3. The administration agreed to be interviewed as a group. The committee met for ninety minutes with approximately twenty attendees, including President Oudenhoven; Dr. Janet Brandau, vice president for academic affairs; Dean Snow; Dr. Victor Vialpando, dean of the School of Professional Studies and Sciences; Dr. Chris Tombari, associate dean of academic affairs in the School of Liberal Arts; Dr. Pace; Mr. James Gray, chair of the mathematics department; Mr. Scott Reichel, chair of the English and communication department; and several additional academic staff and faculty members. The committee conducted its remaining interviews with Mr. Bork, six other current and former CCA faculty members, and one current CCA student at an off-campus location.

#### **IV. Issues of Concern**

In the committee's view, the following were the most prominent issues of AAUP concern posed by Mr. Bork's case.

##### **A. Academic Due Process**

Under Regulation 13b of the AAUP's *Recommended Institutional Regulations on Academic Freedom and Tenure*, when an administration dismisses a part-time faculty member before the end of the term of appointment, it must provide that faculty member with a statement of cause for the action and opportunity for a hearing before a faculty body. This regulation is further qualified by the following footnote (quoting Regulation 5a): "Adequate cause for a dismissal will be related, directly and substantially, to the fitness of faculty members in their professional capacities as teachers or researchers. Dismissal will not be used to restrain faculty members in their exercise of academic freedom or other rights of American citizens." Regulation 13b lacks the complexity of AAUP-recommended procedural standards that govern dismissals of full-time faculty members—as set forth in the 1958 *Statement on Procedural Standards in Faculty Dismissal Proceedings*, a joint formulation of the AAUP and the Association of American Colleges (now the Association of American Colleges and Universities), and, more elaborately, in Regulations 5 and 6 of the *Recommended Institutional Regulations*. It nevertheless incorporates the two most basic elements of a statement of cause and a hearing before a body of peers.

No one disputes the fact that the CCA administration did not afford Mr. Bork such a procedure. In

conversation with the investigating committee, the administration cited system-level policy in defending the lack of a hearing. CCCS Board Policy (BP) 3–50, “Employee Grievances,” lists “dismissals, nonrenewals, reductions-in-force, suspensions, disciplinary actions” among the many “nongrievable matters” and points the reader to BP 3–20, “Due Process for Faculty.” BP 3–20 lays out a limited set of due-process protections for employees on a “regular faculty contract” of “at least 50% of full-time service.” Mr. Bork, classified as an adjunct instructor per BP 3–10, “Administration of Personnel,” was among the many CCA faculty members not covered by the limited due-process protections of BP 3–20. (Although the grievance policy, BP 3–50, does apply to adjunct instructors, it stipulates that dismissals are not grievable.)

For those who do fall within the scope of BP 3–20, the policy lists among the grounds for dismissal “incompetence after notice and opportunity to improve.” Although Mr. Bork’s classification as an adjunct instructor left him outside the scope of this policy, the administration cited something very much like instructional incompetence as its justification for Mr. Bork’s summary dismissal (a point discussed in more detail below); and as documented above, the administration did not afford him any opportunity to improve prior to dismissing him. This was despite his six years of service at the institution with—by his own account and that of his colleague and lead philosophy faculty member Mr. David Spiegel—consistently strong evaluations of his teaching.

A review of system-level policies thus reveals a total lack of due-process protections (in matters falling outside the scope of federal or state civil-rights laws) for adjunct faculty members such as Mr. Bork. It bears emphasizing that adjunct instructors constitute, by the administration’s reckoning, at least 80 percent of the CCA faculty. Mr. Bork’s case highlights the very clear threat that a lack of due process poses for the exercise of academic freedom and underscores the general unacceptability of such policies, at CCA and elsewhere. Under these conditions, the academic freedom of adjunct faculty members is not universally guaranteed as a matter of institutional policy but selectively bestowed as a function of administrative benevolence. That is to say, it does not exist.

### **B. Academic Freedom in Teaching**

The present case raises the question whether Mr. Bork’s dismissal violated his right, under the principles of academic freedom, to teach his course

according to his professional judgment. Under the joint 1940 *Statement of Principles on Academic Freedom and Tenure*, “[i]nstitutions of higher education are conducted for the common good and not to further the interest of either the individual teacher or the institution as a whole. The common good depends upon the free search for truth and its free exposition. Academic freedom is essential to these purposes and applies to both teaching and research. . . . Teachers are entitled to freedom in the classroom in discussing their subject.” *The Freedom to Teach*, a statement of Committee A on Academic Freedom and Tenure, elaborates: “The freedom to teach includes the right of the faculty to select the materials, determine the approach to the subject, make the assignments, and assess student performance in teaching activities for which faculty members are individually responsible, without having their decisions subject to the veto of a department chair, dean, or other administrative officer.”

As Committee A also noted in this statement, academic freedom in teaching is not absolute. When several faculty members are teaching a multisession course, for example,

responsibility is often shared among the instructors for identifying the texts to be assigned to students. Common course syllabi and examinations are also typical but should not be imposed by departmental or administrative fiat. The shared responsibility bespeaks a shared freedom, which trumps the freedom of an individual faculty member to assign a textbook that he or she alone considers satisfactory. The individual’s freedom in other respects, however, remains undiluted. Individuals should be able to assign supplementary materials to deal with subjects that they believe are inadequately treated in the required textbook. Instructors also have the right to discuss in the classroom what they see as deficiencies in the textbook.

The Philosophy 111 course taught by Mr. Bork in fall 2016 was just such a multisession course. However, the responsibility for determining the course’s content did not rest with the faculty members who were to teach it. Nor did Mr. Bork seek to alter the curriculum that the administration had handed him. Indeed, all parties agreed that Mr. Bork was implementing the new curriculum. Insofar as Mr. Bork’s dismissal may have violated his exercise of academic freedom, therefore, it was not because he was

attempting to fashion his course curriculum in a way that contravened administrative directives.

We take up the separate question of the academic freedom of the group in our discussion of faculty governance later in this report. We note for now that it is clear that the curriculum Mr. Bork implemented in fall 2016 was not one he would have chosen had he been afforded the freedom to choose, and it is very much open to question whether the faculty group would have chosen to implement this curriculum absent direction from the administration. Several current and former CCA faculty members indicated to the investigating committee that the administration told them, during summer 2016, that if they were unwilling to implement the new Gateway to Success curriculum, they should seek employment elsewhere.

### **C. Academic Freedom in Intramural Speech**

A second concern related to academic freedom involves the question whether Mr. Bork was dismissed, as he has claimed, in retaliation for expressing his concerns about the Gateway to Success curriculum. The administration adamantly denied to the investigating committee that he had been dismissed for this reason, which would have constituted a violation of his right, under principles of academic freedom, to engage in intramural speech, that is, expression related to institutional governance. According to the 1940 *Statement*, faculty members are “citizens, members of a learned profession, and officers of an educational institution.” In its 2009 report *Protecting an Independent Faculty Voice: Academic Freedom after Garcetti v. Ceballos*, Committee A pointed out that the intramural academic freedom of a faculty member as an institutional “officer” “pertains to both (1) speech or action taken as part of the institution’s governing and decision-making processes . . . and (2) speech or action that is critical of institutional policies and of those in authority and takes place outside an institution’s formal governance mechanisms.”

The timeline of events raises the question of retaliation. As detailed above, Mr. Bork had drafted a letter to the Higher Learning Commission, CCA’s accreditor, stating his concerns about the new curriculum. According to his account, he circulated the draft to CCA administrators on Wednesday, September 7, in the interest, he said, of soliciting their feedback regarding the accuracy of various factual claims he had made. Dr. Pace and Mr. Keith, the achievement coach, observed Mr. Bork’s Philosophy 111 class on Friday, September 9. On the basis of the observation

reports filed in connection with that classroom visit, the administration summarily dismissed Mr. Bork the following Wednesday, September 14 (after notifying him over the phone and in writing the previous day), exactly one week after he had circulated his draft HLC letter to college administrators.

CCA administrators acknowledged to the investigating committee that the timing of the classroom observation “looks bad,” but they asserted that its having taken place so soon after Mr. Bork said he had sent them the draft letter to the HLC was coincidental. This assertion is supported by the fact that September 9 was listed on Mr. Bork’s syllabus as one of the days on which the new curricular interventions would take place. The administration told the investigating committee that observations were being conducted in all gatekeeper classes on such days, in order to assess instructors’ implementation of the new curriculum. Instructors had been informed that observations might take place during any such class session and that they would not necessarily have advance notice of an observation.

Both Dr. Pace and Mr. Keith cited problems of implementation of the Gateway to Success curricular interventions in their written reports. The intervention being conducted that day was the second part of the “Paper Writing Scaffolding” sequence, with students required to produce a thesis statement. There appears to have been universal agreement among the observers, Mr. Bork, and the students in the class that it was too early in the semester for students to know how to write a thesis statement for a philosophy paper. It is open to question whether this is properly understood as the fault of Mr. Bork’s course planning—as the observers’ reports suggest—or of the Gateway to Success curriculum requirements themselves. It is worth noting in this connection that Mr. Bork’s syllabus had been approved by his chair after numerous rounds of revision; Mr. Bork said that no previous course syllabus of his at CCA had received such rigorous administrative scrutiny.

The matter of what went on in Mr. Bork’s classroom on September 9 goes to the heart of the administration’s stated case for Mr. Bork’s dismissal. Dr. Pace told the investigating committee that, in the course of observing Mr. Bork’s implementation of the Gateway to Success curricular interventions, he and Mr. Keith discovered such severe instructional deficiencies that they felt that Mr. Bork should be dismissed right away, before his next class meeting. Dr. Pace emphasized that these were general instructional

problems, not simply difficulties in the implementation of the new curriculum. Indeed, Dr. Pace, Mr. Keith, and members of the administration indicated that the ordinary course of action for a faculty member having difficulty with the new curriculum would be additional training or other instructional support. Summary dismissal mid-semester, while not unprecedented at CCA, according to the administrators with whom the investigating committee spoke, was characterized as very rare and reserved for only the most egregious cases of instructional deficiency or misconduct. (Different members of the faculty and administration—those who had observed Mr. Bork’s class on September 9 and several who had not—used the word *egregious* several times in characterizing the extraordinary conditions for mid-semester dismissal.) The classroom observation reports filed by Dr. Pace and Mr. Keith, however, primarily describe difficulties with the implementation of that day’s Gateway to Success curricular intervention, not general instructional incompetence or misconduct.

Dr. Pace further suggested to the investigating committee that he had reason to believe that the instructional problems uncovered on September 9 were part of a larger pattern of problematic teaching in Mr. Bork’s class. In support of this contention, Dr. Pace told the investigating committee that a concerned student approached him immediately upon his arrival at Mr. Bork’s class (an encounter also detailed in his classroom observation report). He indicated that the student wanted to convey her concerns about the course and intimated that she sought him out in order to express dissatisfaction with Mr. Bork’s teaching. The student in question told the investigating committee that she approached the department chair upon his arrival on September 9 in order to voice her displeasure with the Gateway to Success curriculum itself, not with Mr. Bork’s teaching. She told the investigating committee that she had selected Mr. Bork’s section of Philosophy 111 specifically in order to have him as an instructor, based on his strong reputation among students at CCA, and that she had been happy with his teaching in the course prior to his abrupt dismissal. This student’s account of her encounter with Dr. Pace on September 9 thus contradicts his characterization of its import.

Against the appearance of retaliation, then, the administration asserts that a routine, coincidentally timed classroom observation uncovered evidence of instructional deficiencies so severe that they necessitated the immediate removal of the instructor. The

administration deemed immediate removal of the instructor to be a lesser harm to the affected students than the disruption that ensued as a result of bringing in a new instructor four weeks into the semester. (According to the interviewed student, this disruption included the new instructor’s missing an entire class—one week’s worth of the course—out of forgetfulness.) These reported deficiencies were observed in an instructor who had received consistently strong evaluations of his teaching by students and faculty observers in his six years at CCA leading up to fall 2016 (according to Mr. Bork himself and Mr. Spiegel, his former colleague in philosophy at CCA), whose teaching was praised by a student enrolled in the course in question, and who, as of this writing, retains an appointment as an adjunct faculty member at Arapahoe Community College.

In sum, the CCA administration’s stated rationale for Mr. Bork’s summary dismissal strains credulity. Insofar as the dismissal may have been in retaliation for the letter Mr. Bork had addressed to the HLC, in which he criticized the content and implementation of the Gateway to Success curriculum, it would constitute a gross violation of his right to intramural speech under principles of academic freedom. The seriousness of the violation is underscored by the strenuousness with which the CCA administration denied the charge of retaliation. Certainly it is not impossible that Mr. Bork could have exhibited general instructional deficiencies of the sort described by his department chair and the achievement coach; but it remains difficult to understand why the sudden onset of such deficiencies in an instructor with a lengthy—and, by all accounts, exemplary—teaching record would lead to mid-semester dismissal rather than some milder and more orthodox form of support or remediation.

The facts detailed above give the investigating committee reason to doubt the administration’s account of the case and lend significant credibility to the notion that Mr. Bork’s dismissal was based on considerations that violated his academic freedom.

#### **D. Summary of Findings on Academic Freedom**

While it is impossible to say with absolute certainty that Mr. Bork’s dismissal was an act of retaliation by the CCA administration, we can say with certainty that the timeline of events is suggestive, the circumstances of the dismissal are extraordinary, and the administration’s stated rationale is unconvincing. Moreover, even if the administration were not engaging in retaliation against Mr. Bork, its actions have

convinced many faculty members that it was. The climate of fear among CCA faculty in the wake of this event is such that, with the exception of those who were present at the group meeting that included President Oudenhoven and other administrators, the majority of those with whom we spoke—off campus, we hasten to note—asked to remain anonymous.

Mr. Bork’s case, furthermore, illustrates a lack of academic freedom for part-time faculty members at institutions nationwide. A cannier administration might have let Mr. Bork finish the semester and then have declined to renew his contract. Insofar as this could have been done for exactly the reasons that appear to have motivated the CCA administration’s summary mid-semester dismissal of Mr. Bork, it would have constituted just as severe a violation of academic freedom. But the administration would have enjoyed the plausible deniability afforded by policies and procedures that enshrine arbitrary nonrenewal of appointments for adjunct faculty members.

As the proportion of the faculty employed in adjunct and other contingent positions grows, the overall academic freedom of America’s faculty shrinks. The private business model of academic employment, in which managers exercise complete control over the working conditions and appointment status of those they oversee, is already a reality for the majority of those who teach at US colleges and universities. If we wish to maintain academic freedom for the ever-shrinking proportion of the faculty who enjoy tenure-track and tenured appointments, we must extend the guarantee of academic freedom—through changes in institutional policies, professional norms, and, ultimately, personal attitudes—to those who do not.

#### **E. Conditions for Faculty Governance**

The present case raises concerns about the faculty role in governance at CCA. In particular, the Gateway to Success curriculum appears to have been largely (or perhaps entirely) an administrative initiative. The AAUP’s *Statement on Government of Colleges and Universities* assigns to the faculty “primary responsibility for such fundamental areas as curriculum, subject matter, and methods of instruction.” Although the faculty was involved in working out the details, the initial decision to redesign the curriculum, as well as decisions about the broad outlines of its implementation, was made by the administration and overseen by non-faculty members such as Mr. Keith. The Gateway to Success curricular changes affected

multiple lower-level humanities courses—encompassing a sizable proportion of some entering students’ programs of study at CCA—yet it is unclear whether anyone with professional expertise in curriculum design participated in their development. The Gateway to Success curriculum never went before a campus-wide faculty curriculum committee for approval, a step that the administration characterized as not required by CCA policy in this case of “redesign.” It is also worth noting that among the adjunct faculty members interviewed, none was aware of the existence of a curriculum committee at CCA, which may indicate a problem with the status of adjunct faculty members and curricular authority, or, more likely, a general problem of weak faculty curricular oversight at the institution.

In response to questions about the degree of faculty involvement in developing the Gateway to Success curriculum, Dr. Pace told the investigating committee that meetings were held in February and May 2016 to solicit faculty input. The administration created “design teams” in English, history, and philosophy in order to make specific recommendations about the implementation. The philosophy design team consisted of Mr. Spiegel, Mr. Kyle Hirsch (an adjunct faculty member), and Mr. Keith. The finalized Gateway to Success curricular requirements for philosophy were presented to the philosophy faculty at a meeting on July 22. It was at this meeting that one adjunct faculty member, Dr. William Honsberger, resigned his position in protest of the changes (formalized in his letter dated July 25, cited earlier).

The CCA administration has consistently characterized the Gateway to Success curricular changes as faculty driven. All faculty members, including adjunct instructors, had the opportunity to make suggestions to the design teams, and the design teams themselves had faculty representation. The overall parameters of the new curriculum, however, including the heavy focus on basic writing instruction, were put in place by the administration. Several current and former CCA faculty members suggested that the remedial writing focus of the Gateway to Success curriculum may be connected to the elimination of a number of remedial English courses from the CCA curriculum in 2010, with the remedial interventions making their way into what had previously been introductory-level courses in other humanities disciplines. While the faculty was involved in determining the specifics of the implementation within the parameters set forth by the administration, it does not seem to be

the case, as noted earlier, that faculty members could have refused to go forward with the Gateway to Success curriculum without jeopardizing their future employment at the institution. And while administrators characterized the meetings in February and May related to the proposed redesigns as “brainstorming sessions,” faculty members interviewed saw them as “presentations” at which Dr. Pace and Mr. Keith shared retention-related data and reportedly declared, “There aren’t enough people passing; we need to get more people passing.” The claim that the Gateway to Success curriculum was “faculty driven” thus appears to be tendentious at best.

The implementation of the Gateway to Success curriculum, moreover, is part of a broader pattern in which administrative direction supersedes faculty prerogatives in curriculum design at CCA. For example, it is a college-wide policy at CCA that course textbooks are chosen by department chairs, not by instructors (a fact that Dr. Pace pointed out to Mr. Bork in a July 19 e-mail message). As one faculty member put it to the investigating committee, “the notion that the faculty create and own the curriculum is a foreign one” at CCA. To return to a matter raised earlier in this report: since CCA policy does not grant instructors the freedom to choose their own course materials, the academic freedom of the group of instructors teaching Philosophy 111, which included Mr. Bork, was constrained in ways inconsistent with principles of academic freedom.

It should be stressed that the investigating committee takes no position on the quality or suitability of the Gateway to Success curriculum itself. While Mr. Bork and several others have voiced concerns about the new curriculum, other faculty members have praised it. Dr. Brandon Williams, a history instructor, told the investigating committee that, under the new curriculum, he was able to teach historiography in his introductory classes for the first time. In response to concerns raised by Mr. Bork after his dismissal, both the HLC and the CDHE issued letters expressing their satisfaction with the gatekeeper courses for purposes of accreditation and guaranteed transfer within the Colorado higher education system, respectively.

The investigating committee’s concerns regarding the Gateway to Success curriculum are procedural rather than substantive. The outsize role of the administration in curriculum development and curricular matters more generally reflects a lack of an appropriate faculty role in the governance of the institution.

With the faculty’s governance role diminished, and with the vast majority of the faculty lacking anything approaching adequate due-process protections because of their adjunct status, the academic freedom of the CCA faculty is structurally imperiled.

## **V. Conclusions**

1. The administration of the Community College of Aurora dismissed Mr. Nathaniel Bork from his part-time faculty position in his sixth year of service without affordance of academic due process. This summary dismissal was effected in disregard of the 1940 *Statement of Principles on Academic Freedom and Tenure* and of Regulation 13b of the derivative *Recommended Institutional Regulations on Academic Freedom and Tenure*.
2. Mr. Bork has made the credible allegation that the CCA administration dismissed him summarily in retaliation for having conveyed his intention to send the institution’s accreditor a letter criticizing the new Gateway to Success curriculum. In the absence of an appropriate faculty hearing, this allegation stands unrebutted. The administration’s stated rationale for dismissal does little to dispel the impression that its action violated basic tenets of academic freedom, as set forth in the 1940 *Statement of Principles* and derivative AAUP policy documents.
3. Mr. Bork’s case exposes the absence of adequate procedural protections for the adjunct faculty in the regulations of the Community College of Colorado System. Lacking these protections, adjunct faculty members possess academic freedom only as long as they retain the favor of their administrative superiors. At CCA the administration’s summary dismissal of Mr. Bork has driven this fact home and produced a climate of fear among those who teach part time.
4. CCA’s institutional policies and practices pertaining to curricular design and implementation give inordinate responsibility to the administration and are inconsistent with the principles of academic governance set forth in the *Statement on Government of Colleges and Universities*. By severely limiting the faculty’s ability to exercise its primary responsibility for the curriculum, these policies and practices also constrain the faculty’s collective academic freedom in teaching. ■



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Committee A on Academic Freedom and Tenure has by vote authorized publication of this report on the AAUP website and in the *Bulletin of the American Association of University Professors*.

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