Report of Committee A on Academic Freedom and Tenure, 2022–23

Introduction

Committee A held two meetings in the past year, on October 28–29, 2022, and on June 2–3, 2023.

Judicial Business

Impositions of Censure

In February, the committee discussed by email the Indiana University Northwest case report, published in January, and approved the following statement. On March 4, the AAUP's governing Council voted by electronic ballot to impose censure.

> *Indiana University Northwest*. The investigating committee's report concerns the summary suspension and subsequent summary dismissal of a tenured professor of communication who had previously served as the institution's chief academic officer.
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> In August 2021, the faculty member's dean and the executive vice chancellor of academic affairs—both of whom were named in an equal employment opportunity complaint the professor had filed the previous year—suspended him from his teaching duties for the upcoming semester and reduced his salary by 75 percent, alleging that his teaching was deficient and that he had tried to "shift blame" for his shortcomings to his students.
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> In September 2021, the administration dispatched campus police officers to the faculty member's home to inform him that he had been dismissed and banned from campus, supposedly for making racially charged threats of physical violence in response to the suspension, including "words to the effect that 'the only way to end racism is to kill all the white people.'" No accuser was identified, and no criminal charges were filed.
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> Denied a faculty hearing in which the burden of proof would have rested with the administration, as required under AAUP-recommended standards, the faculty member was compelled to appeal the actions to a faculty grievance committee. In his appeal, he argued that institutional authorities had retaliated against him for criticizing the administration's handling of racial equity issues and for filing equal opportunity complaints against the two administrators responsible for suspending and dismissing him. Even though the faculty member was obliged to bear the burden of proof, the grievance committee determined that both his suspension and his dismissal were unwarranted. The administration rejected the committee's findings and recommendations.
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> The AAUP investigating committee found that the administration's summary actions to suspend and dismiss the professor disregarded AAUP-supported standards of academic due process as well as the institution's own dismissal policy.
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> While deeming implausible the charge that the faculty member had made violent threats, the committee found "highly credible" his allegation that the administration had retaliated against him for his intramural speech and therefore violated his academic freedom.
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> The committee further concluded that conditions for academic governance at the institution are unsound and its racial climate is unwelcoming to faculty members of color. With respect to that climate, the committee noted that the subject faculty member had regularly highlighted racial inequity on the IUN campus and that the criticisms and charges against him employed racial stereotypes of Black men as incompetent, angry, and violent.
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> Committee A on Academic Freedom and Tenure recommends to the AAUP's governing

Council that Indiana University Northwest be added to the Association's list of censured administrations.

In May, after discussing by email the case report on Collin College, published in April, the committee adopted the following statement. On May 11, the AAUP's governing Council voted by electronic ballot to impose censure.

Collin College (Texas). The investigating committee's report addresses the termination from service of three faculty members who were in their second, ninth, and fourteenth years of service at the institution. The college does not have a tenure system, but the AAUP regards the two longer-serving professors as having held continuing appointments because their full-time service exceeded the AAUP-recommended maximum probationary period of seven years.

The faculty member in her second year of service posted commentary on her personal Twitter account during the US vice-presidential debate in October 2020, including a tweet that "the moderator needs to talk over Mike Pence until he shuts his little demon mouth up." A state representative texted Collin's president to point out that she was "paid with taxpayer dollars"; the president replied that he was "aware of the situation" and "would deal with it." In denying her reappointment for the following year, the administration cited her "insubordinate" challenges to the administration and governing board on social media and institutional email lists. It also cited a January 2021 tweet in which she stated that a "Collin professor" had died of COVID-19, when the deceased no longer held an appointment at the college at the time of his death.

In acting against the second and third faculty members, the administration cited their use of social media to exert "external pressure" on the administration regarding its COVID-19 policies instead of using "internal communications processes." The administration's action against the second faculty member also invoked "misuse of the college's name" because she had failed to prevent the Texas Faculty Association (TFA), of which she was a statewide and chapter officer, from listing her Collin College affiliation on its website and Facebook page. Collin administrators asserted that professors could not allow any organization of which they were a member or officer to publish their Collin affiliation—unless that organization was "recognized and supported" by the administration. Apparently the TFA, described by the administration as "a union whose mission and goals are focused on protecting employees' rights [and] advancing the tenure system," was not acceptable. The administration had previously upbraided both faculty members in 2017 for providing their institutional affiliations in a public letter that called for the removal of Dallas-area Confederate monuments, and in 2019 it had cautioned the third for speaking to the *Washington Post* about the local racial climate after a former Collin student was arrested for a racially motivated mass shooting. In the case of the third faculty member, the administration also cited alleged student "perception of bias" in his history courses, including his "perceived overemphasis on race to the detriment of a more complete picture of US History."

The first and second faculty members have reached legal settlements with the college. The third faculty member is also pursuing legal action.

The investigating committee found that the stated grounds for the administration's actions involved "egregious violations" of all three faculty members' academic freedom to speak as citizens and to criticize institutional policies, and, in the case of the third faculty member, of his academic freedom in teaching. The committee determined that the administration dismissed the two postprobationary faculty members from their appointments without a pretermination hearing before an elected faculty body in which the burden of demonstrating adequate cause for dismissal rests with the administration. The committee also found that the administration failed to afford the probationary faculty member the opportunity to petition an elected faculty committee to review her allegation that the nonrenewal decision violated her academic freedom. The report concludes that the conditions for academic freedom and shared governance at Collin College are grossly inadequate.

Committee A on Academic Freedom and Tenure recommends to the AAUP's governing Council that Collin College be added to the Association's list of censured administrations.

Also in May, the committee discussed the report of the investigating committee at Emporia State

University, published earlier that month, and adopted the following statement. On May 11, the AAUP's governing Council voted to impose censure.

> *Emporia State University (Kansas)*. The report of the investigating committee concerns the September 15, 2022, action taken by the Emporia State University administration to terminate the appointments of thirty tenured and tenure-track faculty members under an emergency "COVID-related workforce management policy" enacted by the Kansas Board of Regents in January 2021.
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> Purportedly addressing "the extreme financial pressures placed on the state universities due to the COVID-19 pandemic," the temporary policy suspended existing university regulations governing the termination of faculty appointments for financial reasons and gave the administration the authority to "suspend, dismiss, or terminate" any professor, tenured or untenured, without involving faculty governance bodies and without affording academic due process to the affected faculty members. Although the board of regents offered the policy to all system institutions, the only chief administrative officer to seek to adopt it was the president of Emporia State, who solicited and received board approval for ESU's "Framework for Workforce Management" on September 14, 2022, just three months before the enabling board policy was set to expire. The affected faculty members received notice the next day that their appointments would end on May 16, 2023.
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> The investigating committee found that, in effecting the terminations, the ESU administration and the Kansas Board of Regents disregarded AAUP-recommended standards governing the termination of faculty appointments for financial or programmatic reasons, thus violating the joint 1940 *Statement of Principles on Academic Freedom and Tenure* and Regulation 4 of the derivative *Recommended Institutional Regulations on Academic Freedom and Tenure*. It also found that the board's enactment and reactivation of an emergency COVID-19-related policy allowed system institutions to abrogate existing university regulations comporting in most essential respects with AAUP-supported principles and procedural standards. The board's action thus initiated a process that assaulted tenure and imperiled academic freedom at Emporia State University. The investigating committee concluded that the termination of faculty appointments, the "realignment" of curricular programs, and the development and approval of ESU's framework all occurred without meaningful faculty involvement, demonstrating that conditions for academic governance at Emporia State are deficient.
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> Committee A on Academic Freedom and Tenure accordingly recommends to the AAUP's governing Council that Emporia State University be added to the Association's list of censured administrations.

With three censures imposed and none removed, the number of institutions on the censure list currently stands at sixty.

Legislative Business

At its fall meeting, Committee A agreed on a plan to establish two subcommittees and a joint task force to develop new policy documents on topics of concern and review existing policy documents falling under the committee's purview in preparation for the next edition of the AAUP's *Policy Documents and Reports* (the Redbook). President Irene Mulvey and I, in consultation with Executive Director Julie Schmid and Committee A staff, subsequently determined membership of the subcommittees and task force.

The first of these bodies—a joint subcommittee of Committee A, the Committee on Historically Black Institutions and Scholars of Color, and the Committee on Gender and Sexuality in the Academic Profession—was charged with revising Redbook statements on discrimination and affirmative action. Risa Lieberwitz (chair), Marcus Alfred, Emily Houh, Mark James, Henry Reichman, Saranna Thornton, and I serve on this joint subcommittee. The second body, a joint task force of Committee A and the Committee on College and University Governance, was charged with drafting a brief statement on so-called divisive concepts legislation and recommending for incorporation into faculty handbooks and collective bargaining agreements language designed to temper the effects of such legislation on teaching and research. Its members are Brian Turner (chair), Monica Black, Derryn Moten, Jennifer Ruth, and I. Finally, a subcommittee of Committee A was created to review Redbook statements on campus speech and to draft a statement addressing the use of diversity, equity, and inclusion criteria in faculty evaluations. Anil Kalhan (chair), Nicholas Fleisher, Rana Jaleel, Michael Meranze, Derryn Moten, Patricia

Navarra, and I were appointed as its members. Review of several other Redbook documents was delegated to Committee A staff members.

At its June meeting, Committee A heard updates on the subcommittees' progress in reviewing the pertinent Redbook documents, and I reported on the joint task force's work.

The committee also approved revisions to four Redbook documents at its June meeting. First, it approved a revision to Regulation 13a of the *Recommended Institutional Regulations on Academic Freedom and Tenure* to extend to part-time faculty members in their initial term who are notified of nonreappointment the same due-process rights afforded part-time faculty members who have been reappointed beyond their initial terms. The Council subsequently voted at its June meeting to adopt the revised document, which was posted on the AAUP's website later that month and is printed in this issue of the *Bulletin*. Committee A also approved revisions to *Access to University Records* that deemphasize legal issues related to the Freedom of Information Act, since the report was primarily designed to articulate principles outside the legal realm. The Council subsequently voted to adopt the revised report at its June meeting. The committee also approved revisions to *Tenure in the Medical School*, eliminating a sentence defining faculty status ("To the extent that these functions are all designated by traditional academic titles . . . they warrant the assumption of faculty status . . .") that contradicted the AAUP's operational definition set out in the *Joint Statement on the Faculty Status of College and University Librarians*. That statement defines faculty status as properly belonging to those who do faculty work: teaching, research, and service. Finally, Committee A approved revisions to *The Use and Abuse of Faculty Suspensions*, deleting a paragraph that departed from the AAUP's position that the "threat of immediate harm" can serve as justification for a prehearing suspension only in cases involving the threat of immediate *physical* harm.

Other Committee Activity

Throughout the year, staff members in the Department of Academic Freedom, Tenure, and Governance kept the committee apprised of the progress of potential and recently authorized case investigations, as Committee A is responsible for approving the publication of investigative reports and making recommendations on censure based on their findings. Among such cases were Collin College (Texas), Emporia State University (Kansas), and Indiana University Northwest. (As noted under "Judicial Business," in these three cases Committee A recommended imposition of censure, and the Council voted accordingly.)

Department staff also kept Committee A members informed about the committee of inquiry that was formed in January to write a report about the decision of administrators at Hamline University (Minnesota) not to reappoint part-time instructor Erika López Prater after a Muslim student complained about her showing two paintings of the Prophet Muhammad in her art history class. The committee's report, which was published in May, concluded that the administration of Hamline University violated the academic freedom of Professor López Prater by failing to renew her teaching appointment, apparently as a result of her display of the paintings. The committee of inquiry found that Professor López Prater's decision to display the images was not only justifiable and appropriate on scholarly and pedagogical grounds but also protected by academic freedom.

Emily Houh and I, who also serve on the Special Committee on Academic Freedom in Florida, apprised Committee A of the special committee's activities since its January authorization. The committee was charged with reporting on politically and racially motivated attacks on academic freedom and shared governance in Florida. Cochaired by Afshan Jafar and former Committee A chair Henry Reichman, the special committee has interviewed more than forty faculty members and a former president from multiple public Florida colleges and universities and issued a preliminary report in May. Because of the massive scope of the undertaking and the continued unfolding of events, the special committee will not issue a final report until later this year.

Also at its June meeting, Committee A received updates on plans for the next edition of the Redbook.

Finally, the committee closed its June meeting by enthusiastically applauding my service as outgoing chair and that of outgoing executive director Julie Schmid.

CHARLES TOOMBS (Africana Studies), *chair*
San Diego State University

Cases Settled through Staff Mediation

The following accounts exemplify the efforts of Committee A's staff to resolve complaints and cases during the 2022–23 academic year.

A tenure-track associate professor at a religiously affiliated private university in the Northeast contacted the AAUP for assistance in mid-April 2022, after having been summarily dismissed the previous month for an "egregious violation" of institutional policy involving the disclosure of "confidential human resources information." The faculty member subsequently alleged publicly that the action against him was in retaliation for his outspokenness on matters related to race, diversity, equity, and inclusion at the university.

The AAUP's staff promptly wrote the institution's president to convey the Association's concern that the faculty member was being deprived of a dismissal hearing that would afford the requisite safeguards of academic due process, notwithstanding the fact that the institution's regulations included faculty dismissal policies that largely conformed to Association-recommended standards. The staff urged the president to withdraw the dismissal notice and to ensure that any future action concerning the faculty member be consistent with AAUP-supported principles and procedural standards.

In a brief reply, the president declined, due to the pendency of litigation, to comment on the case, stating only that the institution had followed its relevant policies and procedures.

In a May 23 response, the staff reiterated its concerns and strongly urged the president to rescind the notice of dismissal issued to the professor. The letter closed by stating that, "given the gravity of the issues posed in this case, our staff will be compelled to recommend to the AAUP's executive director that she authorize an independent ad hoc committee to investigate" in the absence of a satisfactory response to the staff's stated concerns or a suitable resolution.

The president responded on May 27, taking the position that the professor was not entitled to academic due process because he was dismissed in his capacity as an employee, not as a member of the faculty. Replying the same day, the staff reiterated that it would be compelled to ask the Association's executive director to appoint an ad hoc investigating committee to report on the matter if it did not receive word by the beginning of the following week that the administration had rescinded the professor's dismissal or that the professor had agreed to an alternative resolution.

On June 9, the professor informed the staff that he would be "entering mediation" with the university's counsel the following week. After hearing nothing further, the staff wrote to the professor on June 29 to inquire about the status of the mediation. He replied succinctly, "After the [staff's] first letter, [the university's] counsel requested mediation. After the third letter, they requested a settlement before mediation."

In late September, the professor happily informed the staff that he had received the final part of a negotiated settlement from the university. His email message closed with appreciation for the AAUP's assistance, stating, "Thanks again for your efforts on my behalf!"

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In late June 2022, a tenured professor at a religiously affiliated private university in the South sought the Association's assistance after the administration declined to issue her a contract for the 2022–23 academic year and placed her on an indefinite unpaid leave effective June 1 following the state education agency's revocation in May of the accreditation of several programs in the university's school of education.

The staff promptly wrote the president of the university to urge that the professor be issued a contract and reinstated to her teaching duties immediately. The letter continued, "If your administration declines to reinstate her, it should, without further delay, restore her salary and afford her a hearing consistent with" AAUP-recommended procedural standards. The letter received no reply.

In early September, the staff sent a follow-up letter to the president, which also did not receive a reply.

Three weeks later, however, the professor informed the staff that she had "just received a paycheck similar to last year's," adding that she "will retire in May [2023]." Upon the staff's requesting clarification about the paycheck, the professor replied that she "will sign an agreement and receive last year's salary in its entirety," adding, "just know that I am very grateful for your assistance." ■