
Academic Freedom and Tenure: Nunez Community College (Louisiana)¹

(FEBRUARY 2019)

This report concerns actions taken in spring 2018 by the administration of Nunez Community College to terminate the services of Professor Richard Schmitt following his twenty-second year on the faculty. These actions were taken in apparent violation of his academic freedom and without affordance of the protections of academic due process to which he was entitled as the result of having obtained de facto tenure at the institution through length of full-time service.

I. The Institution

Elaine P. Nunez Community College, located in Chalmette, Louisiana, was established in 1992 when the Louisiana legislature merged Elaine P. Nunez Technical Institute and St. Bernard Parish Community College. The institution is named after the wife of Samuel B. Nunez Jr., who served as president of the Louisiana State Senate from 1982 to 1988 and from 1990 to 1996. According to the National Center for Education Statistics, NCC enrolls approximately 2,600 students, who pursue certificates and associate's degrees. Its faculty consists of forty-six full-time and fifty-four part-time instructors.

In 1999, control of the institution was transferred to the Board of Supervisors for the Louisiana Community and Technical College System, which serves as its governing board. NCC abolished its tenure system at that time, apparently in order to conform with the system's practice not to grant tenure to its faculty members. The institution's official regulations continue to provide separate dismissal procedures for faculty members whose tenured status was grandfathered.

NCC's current chief executive, Dr. Tina Tinney, was appointed as chancellor in early 2018. She had most recently been vice chancellor of strategic initiatives and external affairs at Northshore Technical Community College in Lacombe, Louisiana. The chief academic officer is Ms. Tonia Loria, interim vice chancellor of academic affairs.

II. The Case of Professor Richard Schmitt

Mr. Richard A. Schmitt Jr. had been a full-time faculty member at NCC since 1996, beginning as an instructor and rising through the ranks to associate professor of English. In 2018, Professor Schmitt served as program manager for general studies, a position in which he was responsible for preparing reports on student learning outcomes to be submitted to the college's regional accreditor, the Southern Association of Colleges and Schools Commission on Colleges (SACS). Professor Schmitt alleges that disagreements with the administration over concerns he had raised about those accreditation reports were the reason for his subsequent dismissal.

In 2017, NCC underwent SACS reaccreditation, in the course of which the accreditor found that the institution had failed to document student success or

1. The text of this report was written in the first instance by the members of the investigating committee. In accordance with Association practice, the text was then edited by the Association's staff and, as revised with the concurrence of the investigating committee, was submitted to Committee A on Academic Freedom and Tenure. With the approval of Committee A, it was subsequently submitted to the administration, to the subject faculty member, and to other persons concerned in the report. The administration of Nunez Community College did not respond to the invitation to provide comments on the draft. In the light of the responses received and with the editorial assistance of the Association's staff, this final report has been prepared for publication.

demonstrate improvements and changes it had made to programs to increase student success rates. SACS therefore imposed additional monitoring reports to demonstrate compliance with accreditation criteria. The arrival of the new chancellor in early 2018 was overshadowed by the impending deadline for the submission of these reports. Professor Schmitt's disagreements with the administration over the information compiled for the reports involved, in addition to the chancellor and the interim vice chancellor, two other administrative officers, Mr. Lenny Unbehagen, dean of planning and institutional effectiveness, and Dr. Donalyn Lott, an institutional assessment and compliance officer.²

In a meeting with program managers, including Professor Schmitt, in January 2018, Chancellor Tinney announced the retention of Dr. Lott as a consultant to assist with the compilation of the monitoring reports. On February 2, Dr. Lott sent Professor Schmitt a newly designed form that was to be used to report the assessment of "program student learning outcomes," after which she met with program managers to give them instructions for changes to be made to previous documents. Professor Schmitt has recounted an altercation between him and Dr. Lott two weeks later, when in a meeting she offered "suggestions" on how to alter the 2015–16 form. He took exception to these suggestions and informed her that he would not "fabricate" information.

The disagreements over the veracity of the monitoring reports came to a head on February 28 when Professor Schmitt sent an email message to Chancellor Tinney, Vice Chancellor Loria, Dean Unbehagen, and Dr. Lott. Professor Schmitt complained that documents that he had prepared for the monitoring report had been excluded from the material to be submitted to SACS. Professor Schmitt wrote, "I am left to conclude that either my work was so unsatisfactory that it did not merit a review or that there's more going on behind these curtains than I am given access to, such that what I am producing with honesty and integrity does not suit our aims." He then asked a series of questions: "Can we garner a consistent view about what we want the GS [General Studies] forms to read like? Does anything regarding what we want smack of unethical production? Am I the best person to perform this task, or am I a name to put on the forms?" He

went on, "If the first answer is yes, and the second no, and you wish me to move forward with my work on these items, we are in concord, and I can have new and improved (revised) documents for Friday. If not, I suggest we expeditiously recruit a colleague better suited for the requirements of this task."

Responding later that evening, Chancellor Tinney took strong exception to Professor Schmitt's statements, writing, "At no time have I ever endorsed or requested that anyone create, fabricate, or produce dishonest information that lacks integrity." Regarding Professor Schmitt's question about "unethical production," Chancellor Tinney responded, "Again, I find this question offensive. I have asked for commitment and dedication to the task but at no point suggested 'unethical production,' nor would [I] condone that approach." She concluded by accepting Professor Schmitt's resignation as program manager, citing his "level of frustration with the process" and his "repeated erroneous interpretation" of the administration's actions. "We simply do not have the luxury of time," she wrote, "in working through this process to debate action items requested as the intention is simply to be successful in our goal, not cause or endorse dissension." Based on the tone of the chancellor's response, Professor Schmitt feared that his faculty appointment might be in jeopardy.

Three weeks later, Professor Schmitt discovered that the completed documents to be sent to SACS as part of the monitoring reports contained information that he had refused to include. Nonetheless, he was listed as the author of these documents. He subsequently sent another email message to the administration, asking for his name to be removed from the documents because he had "had very little to do with" their "final production." He added that he sought "neither credit nor accountability for reports that bear only [a] vague resemblance to the documents" he had drafted. The following week the chancellor denied his request.

On May 18, 2018, Professor Schmitt was informed during a conference call with Chancellor Tinney, Vice Chancellor Loria, and Mr. Richard Greene, the director of human resources, that his appointment would not be renewed for the following year. According to Professor Schmitt, the chancellor reportedly stated that the reason for the decision was that Professor Schmitt and the institution were "not a good fit." On the same day, in confirming the decision by letter, she stated, "As an 'at-will' employee who is an unclassified non-tenured faculty employee, your contract is

2. The following account is based on a fifty-page timeline with documentary evidence that Professor Schmitt provided to the Association's staff.

subject to renewal on an annual basis.” The letter did not mention any reason for the decision. The NCC employee handbook contains provisions for notifying faculty members of their nonreappointment and their dismissal for cause. In neither case is the affected faculty member afforded an opportunity for a hearing or an appeal.

On June 1, 2018, Professor Schmitt submitted to the chancellor a written appeal of his nonreappointment in which he alleged that the reason for her decision was their disagreement over the above-cited accreditation reports. When he did not receive a response, he sent the letter again by email a few days later. The chancellor’s email response of June 15 is quoted here in full:

I received your letter of June 6, 2018, while I was out of the office and am no[w] just able to respond. As you were informed during our telephone conference and in the letter of non-renewal, you were an at-will employee. As stated in the LCTCS’s Employment Relationship for Employees Policy, as an at-will employee, there is no assurance of reappointment, promotion, or tenure.

Serving as Chancellor of Nunez makes it my responsibility to access [*sic*] all needs of the college when making decisions. Those decisions include determining what personnel actions must be taken including non-renewal of contracts.

That evaluative process resulted in my discretionary, unpleasant decision not to renew your contract for the 2018–2019 year. Non-reappointment is not a reflection of your work record or behavior. Nor does it diminish the past contributions you have made to the college. Your time and service to the college is appreciated.

Professor Schmitt subsequently received a response from SACS stating that a complaint he had filed following his dismissal concerning the material submitted to SACS contained “insufficient actionable evidence” and that, as a consequence, the accreditor had completed its review.

III. The Association’s Involvement

On June 19, having been approached by Professor Schmitt for advice and assistance, the AAUP’s staff wrote to Chancellor Tinney to convey the Association’s concerns regarding the administration’s action to terminate the services of a veteran faculty member without the affordance of any due process, adding that an additional matter of serious concern for the Association

was that the action against Professor Schmitt may have been taken in violation of his academic freedom. On July 12, the chancellor, citing applicable institutional regulations, responded to the staff that “no matter his longevity or advancement in rank, Mr. Schmitt was always an at-will employee. There was never any type of tenure, actual or implied, associated with his employment. As an at-will employee, he was totally free, as was the College as his employer, to end the employer-employee relationship at any time with or without cause. Nunez chose to do so and provided him notice of non-renewal of his annual contract.”

By letter of July 20, 2018, the staff responded that, “although the administration’s action may have accorded with the employee handbook, it did not accord with normative academic standards.” The letter further stated that, “given the severity of the departures from AAUP-supported procedural standards thus far evident in this case and the apparent implications for academic freedom, the AAUP’s staff intends to recommend it for formal investigation absent a resolution that reasonably comports with” AAUP-recommended standards. On August 28, the staff informed the chancellor of the authorization of this investigation. On September 6, the chancellor replied that since “the AAUP has no official relationship with our College or its governing System as it relates to certification or accreditation” nor “any type of contractual relationship with our College or its governing system governing employment of our faculty,” “we are under no obligation to participate in your review.”

The investigating committee conducted interviews in the New Orleans area on October 12, 2018. Despite the Association’s efforts to reach out to those at the college who might have shed light on the circumstances of Professor Schmitt’s case, only one individual in addition to Professor Schmitt agreed to meet with the committee. As noted earlier, the NCC administration declined the offer to meet and did not permit the committee to conduct interviews on campus. Nevertheless, the investigating committee believes that it has sufficient information on which to base the conclusions reached in this report.

IV. Issues

The following appear to be the most salient issues presented by Professor Schmitt’s case.

A. Tenure

According to the joint 1940 *Statement of Principles on Academic Freedom and Tenure*, “[a]fter the

expiration of a probationary period, teachers or investigators should have permanent or continuous tenure,” and “the probationary period should not exceed seven years.” Professor Schmitt had been serving on a full-time basis at NCC for twenty-two years at the time of the sudden termination of his services.³ Thus, the administration’s action amounts to a unilateral abrogation of his continuous tenure.

The NCC administration maintains that Professor Schmitt was an at-will employee under the institution’s policy and under state law and that the chancellor was within her rights not to renew his appointment at her discretion. Even if this is an accurate description of law and policy, it is nonetheless a violation of the 1940 *Statement*, which was formulated jointly by the AAUP and the Association of American Colleges and Universities and has been endorsed by more than 250 scholarly and educational organizations. The administration’s abrupt termination of Professor Schmitt’s appointment, without stated cause, after more than twenty years of service, was effected with gross disregard for the protections of academic due process to which he was entitled based on the length of his service and, given the circumstances of the case, very plausibly in violation of his academic freedom.

B. De Facto Tenure

The matter of Professor Schmitt’s de facto tenure warrants some emphasis and explanation. As noted earlier in this report, the college lacks a tenure system. Instructors are therefore appointed on contracts the duration of which is at most one year. Instructors who remain at NCC for many years, such as Professor Schmitt, have undergone repeated annual contract renewals. This is a common practice nationwide: even at institutions that have a tenure system, non-tenure-track faculty members are often employed on this sort of renewable short-term basis.

Despite its unfortunate ubiquity, this type of employment practice nevertheless violates the widely accepted academic standards codified by the 1940 *Statement*, which famously asserts, “Tenure is a means to certain ends; specifically: (1) freedom of

teaching and research and of extramural activities, and (2) a sufficient degree of economic security to make the profession attractive to men and women of ability. Freedom and economic security, hence, tenure, are indispensable to the success of an institution in fulfilling its obligations to its students and to society.”

On the basis of the provisions of the 1940 *Statement* cited in the previous section, the Association recognizes only two kinds of full-time faculty appointments: probationary appointments and appointments with continuous tenure. The single exception is “special appointments clearly limited to a brief association with the institution.” The reason for these standards is clear: without them, institutions are free to employ their faculty members in a state of semipermanent contingency, which is antithetical to the flourishing of faculty and students and to the academic health of the institution.

Professor Schmitt’s employment at NCC constituted much more than “a brief association with the institution.” Given the length of his full-time service, well beyond what most observers would consider to be a reasonable period of probation, and his apparently satisfactory fulfillment of his various professional obligations during that period, the Association regards his appointment at NCC as in fact one with indefinite tenure, regardless of how the college classified it. He accordingly could be dismissed only for cause or as a result of institutional financial exigency or of program closures for educational reasons. Under AAUP-recommended standards, each of these situations carries with it requirements about procedures and notice periods; none of these conditions was met in this case. Indeed, the administration has explicitly disclaimed the existence of any cause for dismissal: in her email message of June 15 to Professor Schmitt, quoted above, Chancellor Tinney wrote, “Non-reappointment is not a reflection of your work record or behavior.”

C. At-Will Status

Chancellor Tinney’s representation of Professor Schmitt’s employment status deserves additional comment. In her nonreappointment letter of May 18, the chancellor characterized Professor Schmitt as “an ‘at-will’ employee who is an unclassified non-tenured faculty employee.” The Association has long held that at-will employment status is incompatible with sound academic practice. As the investigating

3. The lone interruption in Professor Schmitt’s employment at NCC came during the fall 2005 semester, when the institution was temporarily shuttered in the wake of Hurricane Katrina. Professor Schmitt moved from Louisiana to Texas in the aftermath of the hurricane, but he resumed working at the college when it reopened in 2006.

committee in the report on the University of the Cumberlands put it,

[e]mployment-at-will contracts are by definition inimical to academic freedom and academic due process, because their contractual provisions permit infringements on what academic freedom is designed to protect. Since faculty members under at-will contracts serve at the administration's pleasure, their services can be terminated at any point because an administrator objects to any aspect of their academic performance, communications as a citizen, or positions on academic governance—or simply to their personalities. Should this happen, these faculty members have no recourse, since the conditions of their appointment leave them without the procedural safeguards of academic due process. Moreover, the mere presence of at-will conditions has a chilling effect on the exercise of academic freedom. Faculty members placed at constant risk of losing their position by incurring the displeasure of the administration must always be on guard against doing so.

Finally, even though the NCC employee handbook states that nontenured faculty appointments carry no presumption of reappointment, it does stipulate that nonreappointment decisions should follow a review process:

An appointment carries no assurance of reappointment, promotion, or tenure. Reappointments are made solely at the discretion of the institution with the approval of the Board. The non-reappointment of a faculty member does not necessarily reflect on the faculty member's work record or behavior. The determination to reappoint, or not to reappoint, should be based upon a review by the dean of the division, and/or the vice chancellor for academic affairs, and/or the chancellor of the college of the specific conditions relating to the position. Unless an appointment is of a temporary nature for a fixed term, notice that a non-tenured faculty appointment is not to be renewed shall be given to the faculty member in advance of the expiration of the appointment.

It is possible that, in reaching its decision to terminate Professor Schmitt's services, the administration undertook the sort of prior review prescribed in this policy. If it did, Professor Schmitt was not informed of its occurrence or its outcome.

D. Academic Due Process

NCC afforded Professor Schmitt no due process when it terminated his services. No cause for dismissal was stated and no dismissal hearing was held. Professor Schmitt reports that Chancellor Tinney told him in conversation that he was no longer "a good fit" for the institution, but in writing the administration declined to provide even this level of vague, question-begging justification.

On a procedural level, due-process protections exist in order to address the obvious potential for abuse that dismissal powers carry with them. On a substantive level, academic due process recognizes that administrators are not qualified to make such judgments unilaterally.

E. Academic Freedom

The circumstances of the nonrenewal of Professor Schmitt's appointment weigh strongly in favor of a conclusion that the NCC administration violated his academic freedom. Specifically, given the potential retaliatory motivation surrounding its action to terminate his services, it seems highly plausible that the administration's action was taken in violation of his academic freedom to speak on institutional matters without fear of reprisal.

As detailed in the timeline of events described above, NCC was under severe time pressure to provide a report on student learning outcomes to its accreditor on penalty of losing its accreditation. As program manager, Professor Schmitt was responsible for providing student learning outcome data from the relevant years. In many cases, the relevant outcomes apparently had not been tracked, with the result that the requisite data were missing. At the heart of Professor Schmitt's dispute with the administration was his refusal to reconstruct those data from student academic performance in a manner that he perceived as tantamount to fabrication. Circumstantial evidence that the administration may have tried to reconstruct the relevant data comes from Professor Schmitt, who reported that, after his falling out with the accreditation committee, he encountered Dean Unbehagen removing boxes of files from his office without having requested permission to do so or having given prior notice that he needed the files or intended to collect them. Professor Schmitt told the investigating committee that it "felt like breaking and entering."

The administration's refusal to speak with the investigating committee leaves us with many unanswered questions. For instance, we do not know

whether the new administration sought a waiver or reprieve from its accreditor for the years in which data had apparently not been kept under the prior administration. In other words, we do not know whether the administration attempted to deal forthrightly with SACS about the missing data and was rebuffed in its request or whether the data reconstruction project in which Professor Schmitt was allegedly asked to participate was a first-resort initiative of the Tinney administration.

Whatever the answers to the above questions may be, the administration was clearly displeased with Professor Schmitt's noncompliance with its instructions. In exercising his right to speak out critically on institutional matters with which he was directly involved, Professor Schmitt appears to have incurred the displeasure of his administrative superiors. As he later put it to the investigating committee, "I think I challenged authority in a way I should not have."

The administration, for its part, has offered no counternarrative to challenge the strong appearance of retaliation against Professor Schmitt. It has cited no instructional deficiency or any other issue relating to his fitness as an instructor. Instead, it has opted to say nothing, holding fast to the proposition that it has no obligation whatsoever to justify its action to terminate Professor Schmitt's services. While this silence may be a wise move for purposes of limiting the institution's potential legal liability, it is inimical to widely accepted academic standards.

In the context of somewhat different circumstances from those under investigation here—addressing the mid-semester dismissal of an adjunct faculty member—the AAUP committee investigating the case of Mr. Nathaniel Bork at the Community College of Aurora wrote: "A canner 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." The NCC administration clearly chose a strategy of plausible deniability. The facts of the case, however, gravely undermine the plausibility of the administration's denial. Most plausible of all is that the administration's action against Professor Schmitt was a retaliatory measure that violated his academic freedom.

V. Conclusions

1. Under the 1940 *Statement of Principles on Academic Freedom and Tenure*, Professor Schmitt was entitled to the due-process protections that accrue with tenure through length of full-time service. The action of the administration of Nunez Community College to terminate his services without having afforded him any procedural rights was therefore tantamount to a summary dismissal in flagrant disregard of the basic tenets of the 1940 *Statement*.
2. In the absence of any stated cause for the administration's actions and on the basis of the available information, the investigating committee is left to conclude that the termination of Professor Schmitt's services was a retaliatory measure taken in violation of his academic freedom. ■

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Investigating Committee

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*.

Chair: **HENRY REICHMAN** (History), California State University, East Bay

Members: **JEFFREY A. HALPERN** (Sociology), Rider University; **EMILY M. S. HOUH** (Law), University of Cincinnati; **IBRAM X. KENDI** (History and International Relations), American University; **MICHAEL E. MANN** (Meteorology), Pennsylvania State University; **MICHAEL MERANZE** (History), University of California, Los Angeles; **WALTER BENN MICHAELS** (English), University of Illinois at Chicago; **ROBERT C. POST** (Law), Yale University; **JENNIFER H. RUTH** (Film Studies), Portland State University; **JOAN WALLACH SCOTT** (History), Institute for Advanced Study; **DONNA YOUNG** (Law), Albany Law School; **RUDY H. FICHTENBAUM** (Economics), Wright State University, *ex officio*; **RISA L. LIEBERWITZ** (Law), Cornell University, *ex officio*; **JULIE M. SCHMID** (English), AAUP Washington Office, *ex officio*; **IRENE T. MULVEY** (Mathematics), Fairfield University, *liaison from the Assembly of State Conferences*