

February 1, 2021

VIA ELECTRONIC MAIL

Dr. Lesley Hallick
President
Pacific University
2043 College Way
Forest Grove, Oregon 97116

Dear President Hallick:

Dr. Richard J. Paxton, a tenured full professor in the College of Education in his sixteenth year of service at Pacific University, has sought the advice and assistance of the American Association of University Professors as a result of having received notice, in an October 12, 2020, letter from Ms. Jennifer E. Yruegas, general counsel and associate vice president for human resources, of having been placed on “administrative leave” with pay effective immediately. Regarding the basis for the action, the letter states only that “during this time an investigation regarding allegations made against Mr. Paxton will be conducted.” “Further details regarding the matter,” the letter adds, “will be forthcoming over the next few days and weeks.”

Through his attorney, Professor Paxton has provided the following additional information concerning his case.

On October 9, Ms. Yruegas and Dr. Leif Gustavson, dean of the College of Education, invited Professor Paxton to a videoconference call at which Ms. Yruegas alleged that he had violated the “civil rights of his students” by sharing a personal anecdote about encountering female impersonators in New Orleans’ French Quarter.¹ She stated that if he did not resign, she would initiate a Title IX investigation that would result in the termination of his appointment, giving him until Monday, October 12, to submit his resignation. She did not provide any additional details regarding the charges or the investigation. That same day Ms. Yruegas emailed Dr. Paxton a “Voluntary Separation of Release Agreement,” which, among many boilerplate provisions, includes a pledge not to “initiate a Title IX review of Employee’s conduct.” Instead of the six months of severance salary of which Ms. Yruegas had assured Professor Paxton on October 9, the agreement included only three. Professor Paxton did not sign the agreement.

During the following several months, Professor Paxton received scant additional information beyond notice that the Title IX investigation had been assigned to an outside attorney-investigator, Ms. Lori Watson, and that all further university communications with Professor Paxton would be handled by outside counsel instead of by Ms. Yruegas.

¹ According to Professor Paxton, he told the story in his section of EDUC-361, Foundation of Human Development and Psychology, in an attempt to illustrate how Piaget’s schema theory can be applied to gender.

On December 8, the university's outside counsel sent Professor Paxton's attorney a "Notice of Allegations" describing the complaints that had ostensibly led to his removal from the classroom.² According to this document, a student in one of his fall 2020 undergraduate classes had alleged that Professor Paxton "told a story during which he stated that 'every person has a gender,' which ignored the gender identify of agender and nonbinary" and made "negative and gender-stereotyping comments"; acknowledged to the class that some might consider his comments offensive but nevertheless persisted "to engage in the conduct"; and treated the complainant "dismissively" and with a "harsh . . . tone of voice." In addition, five students in a graduate course that fall had alleged that Professor Paxton had "engaged in negative and stereotypical comments" with regard to ethnicity and gender—specifically, that "Jews funded the Revolutionary War" (Dr. Paxton is Jewish), that he thought it "weird" that some women instructors were crying on election night 2016, that "young women today" do not carry "purses like they used to," that Native Americans, historically, were "warlike" and "aggressive," and that Italians "worship" Christopher Columbus.

We understand that, as of the date of this letter, nearly four months after Professor Paxton was suspended from his primary responsibilities, Ms. Watson, the outside investigator, has not contacted him, much less interviewed him. We understand, further, that the Pacific University administration has failed to afford Professor Paxton a faculty hearing in which to challenge the charges that have been placed against him, leaving unresolved whether the action against him was based on considerations that violated his academic freedom or on other impermissible considerations.³ In the meantime, his attorney informs us that outside counsel continues to ignore her requests for material she considers vital for representing her client: Zoom recordings of the classes in question, a recording of Professor Paxton's October 9 meeting with Ms. Yruegas and Dean Gustafson, and "specific allegations" of sexual misconduct that would justify an investigation under the university's Title IX policy.

The interest of our Association in the case of Professor Paxton stems from its longstanding commitment to basic tenets of academic freedom, tenure, and due process, as set forth in the enclosed 1940 *Statement of Principles on Academic Freedom and Tenure*, jointly formulated by the AAUP and the Association of American Colleges and Universities and endorsed by more than 254 scholarly societies and higher-education organizations. We are pleased to note that "Pacific University endorses and honors" the 1940 *Statement* and its appended 1970 Interpretative Comments (*Pacific University Faculty and Governance Handbook*, pages 3 and 26). Procedural standards derived from the 1940 *Statement* are set forth in the AAUP's *Recommended Institutional Regulations on Academic Freedom and Tenure* (enclosed), also cited in the faculty handbook, which refers to the 1940 *Statement* as forming the basis of its tenure polices and to the *Recommended Institutional Regulations* as having "strongly influenced" them.

² This document was apparently sent instead of a "Formal Complaint," which the policy defines as a "document filed by a Complainant or signed by the Title IX Coordinator alleging Sexual Harassment against a Respondent and requesting that the recipient investigate the allegation of Sexual Harassment." Under the policy, a formal complaint, which must be signed and shared with the respondent, is required to initiate an investigation of sexual misconduct. Professor Paxton has advised us that he has never received such a document.

³ On November 4, Professor Paxton filed a complaint of age discrimination with the U.S. Equal Employment Opportunity Commission.

Under the 1940 *Statement*, “Teachers are entitled to freedom in the classroom in discussing their subject” as long as they do not “introduce into their teaching controversial matter which has no relation to their subject.”⁴ A faculty member’s academic freedom in the classroom is otherwise limited only by the recognition that it does not extend to speech that manifests incompetence or violates standards of professional ethics. With respect to the removal of a faculty member from his teaching responsibilities—which our Association denominates a suspension, regardless of how a particular administration may elect to designate it—Regulation 5c(1) of the *Recommended Institutional Regulations* provides that an administration will take this drastic action pending dismissal “only if immediate harm to the faculty member or others is threatened by continuance” (cf. Section 4.11.5 of the university’s faculty handbook) and only after consulting with an appropriate faculty body “regarding the propriety, the length, and the other conditions of the suspension.”⁵

Regarding academic due process, Interpretative Comment No. 9 of the 1940 *Statement* asserts that “a suspension which is not followed by either reinstatement or the opportunity for a hearing is in effect a summary dismissal in violation of academic due process.” Regulation 5c(1) adds: “A suspension that is intended to be final is a dismissal and will be treated as such.” As the Association’s 2008 *Use and Abuse of Faculty Suspension* notes, “It is well attested in the Association’s case history that suspension without a hearing, or a hearing indefinitely deferred, is tantamount to dismissal.”

According to the information we have received from Professor Paxton, the classroom speech under investigation was germane to the subject matter. Whether it violated standards of professional ethics is a judgment to be rendered, not by administrators or outside attorneys, but by

⁴ 1970 Interpretative Comment No. 2 adds, “The intent of the statement is not to discourage what is ‘controversial.’ Controversy is at the heart of the free academic inquiry which the entire statement is designed to foster. The passage serves to underscore the need for teachers to avoid persistently intruding material which has no relation to their subject.”

⁵ The AAUP considers suspension to be a major sanction because of the damage it can inflict on a professor’s professional reputation, among other reasons. As noted in the AAUP’s *Use and Abuse of Faculty Suspensions*, “Historically, suspension has been regarded in Association policy as a severe sanction second only to dismissal, because it has been seen primarily in terms of removal of a faculty member from teaching. As one case report [of an investigation] put it, ‘Barring a teacher from his classroom inflicts ignominy upon the teacher and is destructive to the morale of the academic community.’ An eloquent statement on the adverse effects of suspension, one that has been cited in several subsequent Committee A investigations, was the finding of the investigating committee in the 1966 case of St. John’s University:

The profession’s entire case for academic freedom and its attendant standards is predicated upon the basic right to employ one’s professional skills in practice, a right, in the case of the teaching profession, which is exercised not in private practice but through institutions. To deny a faculty member this opportunity without adequate cause, regardless of monetary compensation, is to deny him his basic professional rights. Moreover, to a good teacher, to be involuntarily idle is a serious harm in itself. One has only to think of the famous teachers of the past, beginning with Socrates, to realize what a serious injury it would have been to these men to have been denied the right to teach. In the case of the teachers at St. John’s, denial of their classrooms was, in itself, serious injury. To inflict such injury without due process and, therefore, without demonstrated reason, destroys the academic character of the University.

professional peers—if academic freedom is to retain any meaning at Pacific University. As far as we are aware, Professor Paxton’s suspension was effected absent any consultation with a faculty body. We have seen no evidence, furthermore, that Professor Paxton’s presence in his Pacific University classroom, where he has apparently taught without complaint for fifteen years, represents a continuing threat of immediate harm to himself or others.⁶ With regard to “opportunity for a [faculty] hearing,” after having been suspended for 115 days, Professor Paxton has evidently received none—nor is one evidently in prospect. We are therefore compelled to regard the action against him as a summary dismissal, imposed in serious disregard of AAUP-supported principles and standards. Such an action against a tenured faculty member, if allowed to stand, would set a precedent inimical to tenure, academic freedom, and due process at Pacific University, despite the faculty handbook’s ringing endorsement of the 1940 *Statement*.

Our information regarding the case of Professor Paxton has come to us exclusively from him. We appreciate that you may have additional information that might enhance our understanding of the situation. We would therefore invite your comments. Assuming the essential accuracy of what we have recounted above, we would urge that his suspension be rescinded immediately and that any further actions in his case conform to the above-cited principles and procedural standards.

We look forward to your timely response.

Sincerely,



Gregory F. Scholtz, Director
Department of Academic Freedom, Tenure, and Governance

Enclosures by electronic mail attachment

Cc: Dr. John Miller, Vice President of Academic Affairs and Provost
Dr. Leif Gustavson, Dean, College of Education
Ms. Jennifer E. Yruegas, General Counsel and Assistant Vice President for Human Resources
Professor Leigh Schaid, Chair, Faculty Senate
Professor Marcus Welsh, Chair-elect, Faculty Senate
Professor Krishnan Ramaya, Chair, University Personnel Committee
Professor Mark Bailey, Senate Representative, College of Education
Professor Amanda Stead, Senate Representative, College of Education
Professor Michael Dreiling, President, Oregon AAUP Conference
Professor Richard J. Paxton

⁶ The AAUP has historically viewed the threat of immediate harm that would justify a suspension pending dismissal as physical in nature.