Special Report: COVID-19 and Academic Governance

(MAY 2021)

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I. Introduction

For American higher education, as for almost every other aspect of life and livelihood in the United States, the arrival of the COVID-19 virus in early 2020 was a cataclysmic event.[1] Within a matter of weeks—at some institutions, a matter of days—instruction moved online, meetings and conferences were canceled or transferred to platforms such as Zoom, residence halls were evacuated, and athletic and hospitality facilities closed. As the first wave of the virus spread, the longer-term impact of the pandemic began to be felt, and many institutions faced dire challenges in the 2020–21 academic year. Over the summer of 2020, amid the mass protests that swept the country in the wake of the murder of George Floyd, many campuses faced not only an overdue reckoning with their historical entanglements with racism but also a contentious debate about the educational mission of colleges and universities during a pandemic. As *New York* magazine asked in May 2020, What is college without the campus? And many wondered whether students would continue to enroll in college at all if "enrollment" consisted in paying tuition for a series of online classes.

The financial effects of the pandemic were immediate and felt most keenly at first by residential and dining staff who faced across-the-board layoffs.[2] More alarming for many institutions, however, were the long-term implications of those financial effects, which induced numerous administrations to announce measures ranging from the relatively mild (hiring and salary freezes) to the draconian (program closures and mass layoffs of tenured and nontenured faculty members). While the financial impact of the pandemic presented a sudden and unforeseeable challenge at most institutions, at others it exacerbated conditions that had been festering long before COVID-19.

This report is about those responses to the crisis that, in disregard of the norms of academic governance, were effected largely by administrative fiat, with little or no consultation with the faculty even where austerity and emergency measures had dramatic effects on the curriculum, an area traditionally considered the faculty's primary responsibility. This investigating committee does not doubt, nor does it dispute, the financial challenges faced by colleges and universities in the pandemic, especially the small, private, tuition-dependent institutions that most of this report concerns; nor do we contest the fact that, in the first wave of the pandemic, some decisions, such as to conduct all business remotely, had to be made expeditiously.

The investigation on which this report is based, however, was prompted largely by opportunistic exploitations of catastrophic events. This phenomenon, generally known as "disaster capitalism," a term coined by Naomi Klein, was exemplified in early December 2020 by James White, interim dean of the College of Arts and Sciences at the University of Colorado at Boulder, who, after announcing a long-term plan to replace tenured faculty members with non-tenure-track faculty members, said, "Never waste a good pandemic." Even though Dean White apologized the following week, calling his remark "flippant and insensitive," to many faculty members the gaffe seemed to exemplify what in political circles is called saying the quiet part out loud.[3] In this respect, as in so many others, COVID-19 served as an accelerant, turning the gradual erosion of shared governance on some campuses into a landslide.

Larry Gerber's *Rise and Decline of Faculty Governance* was published in 2014, long before the events that precipitated this investigation and report. It charts two parallel developments that have transferred decision-making authority to administrations and instituted a corporate model of university governance: one, the expansion of areas of university administration, from the financial office to the office of the general counsel to the offices of risk management, in which the faculty has no involvement; and two, the casualization of the faculty workforce entailed in the decades-long transition from a majority tenured to a majority nontenured faculty. Some institutional leaders seem to have taken the COVID-19 crisis as

1. The members of the investigating committee prepared the first draft of this report. In accordance with Association practice, the AAUP's staff edited the draft text and, with the concurrence of the investigating committee, submitted it to the Committee on College and University Governance. With that committee's approval for publication, the staff distributed the individual sections on the institutions investigated to the relevant principal parties for comment and corrections of fact. 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.

2. See Dan Bauman, "A Brutal Tally: Higher Ed Lost 650,000 Jobs Last Year," *Chronicle of Higher Education*, February 5, 2021, https://www.chronicle.com/article/a-brutal-tally-higher-ed-lost-650-000-jobs-last-year. The job losses in 2020 represented 13 percent of the higher education workforce.

3. See Colleen Flaherty, "Colorado at Boulder Dean Offers Mea Culpa," *Inside Higher Ed*, December 7, 2020, https://www.insidehighered.com/quicktakes/2020/12/07/colorado-boulder-dean-offers-mea-culpa.

an opportunity to turbocharge the corporate model, allowing them to close programs and lay off faculty members as expeditiously as if colleges and universities were businesses whose CEOs suddenly decided to stop making widgets or shut down the steelworks.

In certain respects we have been here before. In 2005, Hurricane Katrina wreaked devastation on universities in New Orleans, some aspects of which were arguably more severe than the pandemic. As the AAUP's report on that disaster noted, Katrina was "undoubtedly the most serious disruption of American higher education in the nation's history" insofar as "no earlier disaster destroyed virtually an entire community, not only depriving affected institutions of usable facilities, but also depleting severely the student population, leaving faculty and staff without homes [and] teaching hospitals without patients."[4] Then, as now, administrations insisted that unforeseeable, catastrophic events warranted unprecedented emergency measures, including suspension of crucial institutional regulations and mass terminations of tenured faculty appointments; then, as now, the Association held that its policies and procedures, especially those concerning financial exigency, are designed to respond to crises the nature of which no one can predict.

Besides the report that resulted from the Katrina investigation, the other precedent in the annals of the AAUP for this multi-institution report is *Academic Freedom and Tenure in the Quest for National Security*. That 1956 report on eighteen cases was also a response to a nationwide phenomenon—in this case the advent of McCarthyism and the widespread demand, instigated by both individual institutions and state legislatures, that faculty members sign loyalty oaths or refrain from invoking their Fifth Amendment right against self-incrimination as a condition of retaining their appointments. Over the course of the postwar Red Scare, hundreds of faculty members were dismissed without due process, and academic freedom and the institution of tenure were severely eroded. *Academic Freedom and Tenure in the Quest for National Security*, however, was published well after McCarthyism had reached its peak; the current report, by contrast, attempts to capture and respond to a national crisis as it has unfolded.

For that reason, this report is unavoidably incomplete. As soon as news of this investigating committee and its charge was released, faculty members from a wide range of institutions contacted the AAUP's staff with accounts of similar developments on their campuses, and while the committee reviewed information about the eight institutions under investigation, news reports continued to pour in about the financial effects of the pandemic on other institutions. This report, then, should be understood as illustrative rather than exhaustive. That an institution goes unnamed in this report does not mean that it is in compliance with AAUP-recommended governance standards. This report should be read as an affirmation of AAUP-supported standards of academic governance that apply to any institution that has abandoned such standards in response to the pandemic.

It must be stressed that this multi-institution report also differs from its two predecessors in not being the product of an investigation of academic freedom and tenure violations. This report concerns academic governance, even when administrations have traduced AAUP governance standards in ways that entail the termination of tenured faculty appointments. As with all AAUP governance investigations, the primary "task of the investigating committee is to . . . reach findings on whether the standards enunciated in the *Statement on Government of Colleges and Universities* and in derivative Association documents have been violated" (*Standards for Investigations in the Area of College and University Governance*).[5] Also worth noting is

4. "Report of an AAUP Special Committee: Hurricane Katrina and New Orleans Universities," *Academe*, May–June, 2007, 61.

5. The *Statement on Government* was jointly formulated in 1966 by the AAUP, the American Council on Education, and the Association of Governing Boards of Universities and Colleges. It makes the case that effective institutions of higher education practice what the report refers to as "joint" or what has come to be called "shared" governance, which, in practical terms, means (a) that no important institutional decision is made without the participation of the governing board, the administration, and the faculty and (b) that each institutional component has decision-making authority based on its primary responsibilities. The faculty has "primary responsibility" and thus decision-making authority "for such fundamental areas as curriculum, subject matter and methods of instruction, research . . . and those aspects of student life which relate to the educational process" as well as for matters related to faculty status—that is, "appointments, reappointments, decisions not to reappoint, promotions, the granting of tenure, and dismissal." As shared governance is practiced at most reputable institutions of higher education, the administration and governing board accept faculty recommendations in these two broad areas "except," as the *Statement* notes, "in rare instances and for compelling reasons which should be stated in detail."

The AAUP policy documents derived from the *Statement on Government* that are most relevant to the cases in this report include *Confidentiality and Faculty Representation in Academic Governance* (2013), that, unlike the 2007 report on Hurricane Katrina, but like the 1956 report on McCarthyism, this report tends not to offer highly detailed accounts for each institution (as would be typical in single-institution governance and academic freedom and tenure investigations), although in some cases the committee was compelled to delve into the details in order accurately to gauge the severity of the departures from AAUP-recommended governance standards.

Finally, we note that in some cases examined here, public statements by administrators or board members rendered detailed investigation all but superfluous. In the December 6, 2020, issue of the *Wall Street Journal*, for example, Douglas Belkin reported about this investigation, writing as follows about one of the cases in this report:

> When Kenneth Macur became president at Medaille College in 2015, the small, private school in Buffalo, N.Y., was "surviving paycheck to paycheck," he said. Enrollment was declining and the small endowment was flat. Then came the coronavirus pandemic. The campus shut down and revenue plummeted 15%. Dr. Macur saw what he considered an opportunity: With the approval of the board of trustees, he suspended the faculty handbook by invoking an "act of God" clause embedded in it. He laid off several professors, cut the homeland security and health information management programs, rescinded the lifelong job security of tenure and rewrote the faculty handbook, rules that had governed the school for decades.
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> "I believe that this is an opportunity to do more than just tinker around the edges. We need to be bold and decisive," he wrote in a letter to faculty on April 15. "A new model is the future of higher education."
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> Dr. Macur and presidents of struggling colleges around the country are reacting to the pandemic by unilaterally cutting programs, firing professors and gutting tenure, all once-unthinkable changes.[6]

The AAUP announced the initiation of this investigation on September 21, 2020. The AAUP's staff had first written to President Macur on April 29. In his May 12 response, the president declined a request for an interview by the investigating committee, submitting instead a three-page statement, which claimed that Medaille "has no affiliation or relationship with the AAUP, does not have a faculty chapter of the AAUP, and does not have any faculty listed as members on the AAUP's website.[7] The AAUP does not govern, accredit, or have any authority over Medaille College." It is symptomatic of the current state of affairs in American higher education, we believe, that a college president would declare his intention to dismantle tenure at his institution to the *Wall Street Journal* but refuse to participate in an investigation conducted by the AAUP. But it is our hope that this report will serve as a reminder of why AAUP-recommended principles and standards of academic governance have historically been, and should continue to be, followed by leaders of reputable institutions of higher education in the United States.

II. Case Reports

This section contains the reports of case investigations at Canisius College, Illinois Wesleyan University, Keuka College, Marian University, Medaille College, National University, University of Akron, and Wittenberg University.

A. Canisius College (New York)

Located in Buffalo and describing itself as "Western New York's Catholic, Jesuit college," Canisius College enrolls about three thousand students. The full-time faculty numbers around 150, the part-time faculty around 230. The institution's president is Mr. John J. Hurley. An alumnus, President Hurley left his law practice in 1997 to join the college's administration, serving in several administrative roles, most recently vice president for college relations, prior to his appointment as president in 2010.

Financial Exigency, Academic Governance, and Related Matters (2004), *On Institutional Problems Resulting from Financial Exigency: Some Operating Guidelines* (1978), *On the Relationship of Faculty Governance to Academic Freedom* (1994), *The Role of the Faculty in Budgetary and Salary Matters* (1972), and *Statement on Academic Government for Institutions Engaged in Collective Bargaining* (1988). Most of the procedural elements of Regulations 4c, "Financial Exigency," and 4d, "Discontinuance of Program of Department for Educational Reasons," of the *Recommended Institutional Regulations on Academic Freedom and Tenure* are also derived from the *Statement on Government*.

6. Douglas Belkin, "Hit by Covid-19, Colleges Do the Unthinkable and Cut Tenure," *Wall Street Journal*, December 6, 2020, https://www.wsj.com/articles/hit-by-covid-19-colleges-do-the-unthinkable-and-cut-tenure-11607250780.

7. The AAUP does not list its members at Medaille, or any other institution, on its website.

In July 2020, Professor Tanya Loughead, the college's AAUP chapter president, informed the AAUP's national office that the Canisius College governing board and administration had discontinued nine academic programs—classics, creative and performing arts, entrepreneurship, European studies, human services, international business, physics, religious studies, and urban studies—and reduced the number of faculty positions in several more. As a result, twenty-two full-time faculty members, most of whom were tenured, received letters of termination. The letters stated that the basis for closures, reductions, and terminations was the governing board's decision to adopt a budget requiring $12.3 million in cuts, with $2.5 million in cuts explicitly required to come from faculty lines.

Seven of the twenty-two affected faculty members sought the AAUP's assistance—Professors M. Fernanda Astiz, Ji-Hee Kim, Steven M. Maddox, Matthew Mitchell, Melissa A. Mosko, James Oigara, and Kathryn F. Williams. All seven were tenured, with an average length of service to Canisius College of thirteen years. According to them and other faculty members, the decisions to reduce and close programs and to terminate full-time appointments were reached without meaningful faculty participation and in violation of key provisions of the faculty handbook.

Through its inquiries and its review of the available documentation, including some fifty pages of material submitted to the committee on January 18 by the administration and its attorneys, the investigating committee has reached the following understanding of the most relevant events.[8]

Canisius had been facing increasing financial challenges because of enrollment declines and managing small deficits in previous years with the hope that various changes would turn the situation around. But the increased costs and lost revenues presented by the COVID-19 pandemic made the financial problems more severe and the financial projections much more dire. By June 2020, according to the administration, the institution faced a $20 million operating-budget deficit.

On June 4, the administration formed an ad hoc Faculty Budget Working Group (FBWG) to address the mounting financial problems. The FBWG consisted of the "senior leadership team" (President Hurley; Dr. Sara R. Morris, vice president for academic affairs; Mr. Marco F. Benedetti, vice president for business and finance) and the faculty members serving on the faculty senate's executive and budget committees. Professor Robert Nida, the faculty senate chair, had worked with President Hurley to ensure that the faculty would be represented on this body.[9] FBWG members were told that confidentiality was expected and enforced, but Professor Nida was permitted to report to the faculty generally about the meetings. According to faculty sources, the administration removed the dean of the school of business from the FBWG "specifically for violating confidentiality" after she sent a "frank" email to the faculty in her college detailing the committee's first meeting.

The FBWG met four times over the summer. In their January 18 letter to the investigating committee, the attorneys representing the Canisius College

8. In an April 19 letter responding on behalf of the Canisius administration to the AAUP staff's invitation for comment on the draft text of this report, the college's attorneys emphasize this submission and the investigating committee's supposed failure to take it adequately into account, which they characterized as "curious and troubling" (see footnote 19). Unfortunately, the attorneys' five-page letter, President Hurley's six-and-a-half-page letter, and their respective "exhibits" (most of which lacked relevance to the current situation, with some dating as far back as 2010) offered little that directly addressed the faculty's allegations regarding governance violations occurring in 2020.

9. In their April 19 letter, the college's attorneys commented on this passage as follows:

> AAUP wrongly describes the process by which the Faculty Budget Working Group (FBWG) was formed. In late May, the President called and wrote to the Chair of the Faculty Senate wherein the President informed him that the College was facing significant financial challenges. The President told him that he (the President) was very mindful of his shared governance obligations and that Canisius needed to have some meetings with appropriate Faculty representation to talk about how the College would proceed to address the financial challenge. The President pointed out that in the past when Canisius had dealt with sensitive financial issues, the Faculty Senate had generally delegated its executive committee to participate in such discussions. The President told him that the executive committee was an option in this case as well, but they could also consider involving the existing Faculty representatives on the College Budget Committee. The President made it clear, however, that in the final analysis, the decision as to who should participate in those meetings was . . . the Faculty Senate's to make.
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> As a result of this inquiry, it was the Faculty Senate—the elected representative body of the Canisius Faculty—that designated its representatives to participate in the discussions with senior administration of the College. The 11 Faculty representatives (a substantial number) became known as the FBWG. It consisted only of Faculty members and was determined solely by the Faculty Senate. Indeed, the FBWG met separately from the larger group throughout this process to develop its strategy and to study and discuss further the information distributed at the meetings with the administration.

administration wrote that "the administration provided a complete exposition of the budget" to the FBWG, shared salary/compensation information as needed, and "encouraged [faculty members] to challenge the administration's assumptions and conclusions on the academic cuts and most importantly, [to] offer alternatives." Unfortunately, the investigating committee has seen no evidence to support these assertions. On the contrary, despite the confidentiality requirement imposed on the FBWG, faculty sources have reported that the process engaged in by that body bore little resemblance to genuine shared governance. As one of the faculty members who had served on the FBWG put it, "By no means was all information regarding the budget presented" since that "would have been impossible in the time frame created." The FBWG, furthermore, "never discussed staffing . . . job responsibilities, salary information, or . . . compensation" with any specificity. With respect to the claim that the administration encouraged FBWG members to challenge the administration's assumptions and conclusions regarding the program closures and to offer alternatives, this FBWG member stated, "None of this was discussed at any length that would have been deemed shared governance or problem solving. This statement is factually untrue."

On June 30, 2020, the dean of the college of arts and sciences sent an email message to the faculty in his school noting that, despite the expiration of faculty contracts, he felt optimistic that "next year will be calmer." According to faculty members, President Hurley also reassured the faculty by email in early July that, despite not receiving new contracts, faculty members should still all consider themselves employed under the old contracts.[10]

On July 17, however, the college's three academic deans informed several departments that a certain number of reductions had to occur in their departments. They instructed department members to "choose from among themselves" the colleagues to be let go. If senior faculty members did not volunteer to retire, faculty members were told, the dean would begin dismissing people based on length of service, beginning with the most junior faculty members.

That afternoon members of several academic departments around the college received requests for teleconference meetings with their deans. At these meetings the deans informed faculty members that their appointments were being terminated and that human resources staff would be presenting them with options for terminal contracts and severance packages. Other faculty members learned of their appointment terminations at department meetings the next day. Eventually, all but four of the twenty-two affected faculty members selected one of the proffered options; those four professors are currently in litigation with the college over the terms of their severance.[11]

On July 20, President Hurley sent a letter by email to the entire Canisius faculty announcing that in order to achieve the $12.3 million in budget cuts required by the board, the administration was discontinuing academic programs and terminating twenty-two faculty lines. Cuts would be made in majors that had low enrollments, and the core curriculum would be "streamlined."

Vice President Morris called for a meeting of the Committee on Faculty Status (CFS) that same day to present the planned terminations for the committee's review and eventual recommendation, as required under the faculty handbook. The committee, which consists of the academic vice president, the three academic deans, and eight elected faculty members, declined to make a recommendation on the terminations because two preconditions spelled out in the faculty handbook had not been met: the college's budget committee had not documented "compelling budgetary reasons" for the terminations and the administration had not provided the faculty senate with the required financial information. The faculty evaluation process set out in the faculty handbook specifies that a recommendation from the CFS precedes an appeal to the Evaluation Review and Appeals Committee. As a result, none of the affected faculty members filed an appeal with that body.

On July 22, the faculty senate adopted a resolution of no confidence in the board of trustees and the president. On July 27, the Faculty Welfare Committee issued a statement condemning the terminations and pointing

10. Some of the language in the faculty handbook regarding contract timelines is vague: "On or about April 1, the President writes to all faculty members and indicates rank and salary terms for the subsequent year. . . . By April 30, it is hoped that all faculty contractual arrangements for the following year will have been completed." However, the handbook's section on faculty evaluations (page 32) states unequivocally that contract deadlines "may be extended with the approval of the Vice President for Academic Affairs, *but not beyond June 01, when contracts must be issued"* (emphasis added).

11. See Colleen Flaherty, "Not Going Quietly," *Inside Higher Ed*, February 23, 2021, https://www.insidehighered.com/news/2021/02/23/canisius-professors-fight-keep-tenure.

out that the administration had disregarded applicable provisions of the faculty handbook, undermined tenure, and violated AAUP standards. On July 28, the Core Curriculum Committee issued a statement documenting its "non-involvement" in the core-curriculum revisions and the role it should have played in changes to the core under the college's governing documents. And on July 28, the CFS emailed the faculty to announce its decision not to review the terminations because "the administration and the Committee on Faculty Status were unable to come to an agreement about the correct process."

The AAUP's staff wrote to President Hurley on August 6 to convey the Association's concerns regarding apparent departures from the governance provisions of Regulation 4c, "Financial Exigency," of the AAUP's *Recommended Institutional Regulations on Academic Freedom and Tenure*. The letter stated that, in discontinuing nine programs and terminating more than two dozen faculty appointments, the administration and governing board had apparently observed "almost none" of the relevant standards of Regulation 4c, which requires meaningful faculty participation in every stage of the process. As a result, the AAUP was compelled to "regard these actions as illegitimate and sharply at odds with widely accepted norms of academic governance, tenure, and academic freedom." The staff's letter called on the administration to rescind the notices of termination and, going forward, to adhere to a process consistent with the principles and standards cited in the letter.

Although President Hurley emailed the staff on August 17 to say that he would "respond shortly," he did not do so, and the staff wrote again on September 8 to inform him that the Association's Staff Committee on Investigations would be meeting on September 14 to advise the executive director regarding an investigation. This communication prompted an immediate response from the college's outside attorneys, with whom the responsible staff member spoke the next day. The attorneys informed the staff member that the college, as a Jesuit institution, wished to "do the right thing" and was therefore attempting to reach what they characterized as generous financial settlements with the affected faculty members.[12] The staff member welcomed the news but hastened to point out that because the investigation was being conducted under the aegis of the Committee on College and University Governance, not Committee A on Academic Freedom and Tenure, it primarily concerned alleged departures from AAUP-recommended principles and standards of *academic governance*. Therefore, the staff member added, assuming that the relevant faculty governance bodies did not withdraw their governance complaints, the AAUP would not consider the case resolved even if all the faculty members whose appointments were terminated withdrew their academic freedom and tenure complaints.

There is little dispute that the financial situation at Canisius went from bad to worse as the result of the global pandemic. A careful consideration of how to address this situation, undertaken through proper channels of shared governance and in accordance with AAUP-recommended standards, might well have reached a conclusion on the necessity of academic restructuring and the termination of faculty appointments similar to the conclusion at which the administration actually arrived. However, the college's governing board and administration disregarded the role of elected faculty governance bodies in determining the course of action—as prescribed by the AAUP-supported standards set forth in the *Statement on Government of Colleges and Universities* and in Regulations 4c and 4d of the *Recommended Institutional Regulations* and reflected to some degree in the faculty handbook. While the faculty handbook lacks detailed policies and procedures governing terminations of appointment because of financial exigency and program discontinuance for educational reasons, unlike most other faculty handbooks, it does reprint the entire 1940 *Statement of Principles on Academic Freedom and Tenure* and 1970 *Interpretive Comments*, with the board's stated endorsement. It also contains provisions embodying basic principles of academic governance, as enunciated in the *Statement on Government of Colleges and Universities*. It requires, for example, that the College Budget Committee be fully informed of budget issues, that the Committee on Faculty Status be consulted prior to the termination of faculty appointments, that the Faculty Welfare Committee be part of that process as well because of its role in making recommendations related to academic freedom and tenure, and that the Core Curriculum Committee and the faculty senate approve any changes to the core curriculum. In discontinuing nine academic programs and terminating the appointments of

12. Asked to comment on the draft text of this report, one of the affected faculty members wrote, "I was never offered anything beyond the contract I should have had in the spring. . . . 'Generous' is a matter of opinion, but settlements were in reality not offered to everyone, nor offered consistently. So this statement is simply not true."

twenty-two faculty members, the administration elected to disregard these existing faculty governance bodies and the college's applicable regulations.

The governing board and administration failed to declare financial exigency but terminated tenured faculty appointments for budgetary reasons. Although the administration shared some financial information with the FBWG, it did not share the detailed information required by Regulation 4c of the *Recommended Institutional Regulations* when terminating appointments because of financial exigency. The administration's requiring confidentiality from the faculty members on the FBWG meant that those representatives believed that they could not share what little financial information they received with colleagues who might have had more experience and insight into accounting and budget issues.[13] The administration did not give faculty members adequate time, information, or opportunity "to render an assessment in writing of the institution's financial condition" (Regulation 4c[2]). As a result, the faculty did not have the information or opportunity to assess fully the twin claims that Canisius faced a massive budget shortfall *and* that this shortfall could be resolved only by discontinuing programs and terminating tenured faculty appointments.

Under the *Statement on Government*, timely and accurate communication between the administration and the faculty is a central condition of sound academic governance. Reassurances from the Canisius administration that faculty contracts were pending and that delays in issuing contracts through May and June were merely logistical had the effect of obfuscating the nature of the financial crisis.

Nor did the administration follow AAUP-recommended procedures for terminating faculty appointments in the face of a budgetary crisis. Regulation 4c(1) states, "The faculty or an appropriate faculty body . . . exercise[s] primary responsibility in determining the criteria for identifying the individuals whose appointments are to be terminated." However, there is no evidence that an appropriately constituted faculty body exercised any responsibility for making these determinations. The administration's practice of convening confidential sessions in which a half-dozen faculty members are presented with a plan and then asked if they have any better suggestions is not a process by which the faculty exercises its "primary responsibility."

Under Regulation 4d, "Discontinuance of Program or Department for Educational Reasons," of the *Recommended Institutional Regulations*, faculty appointments can be terminated, absent a declaration of financial exigency, when programs or departments are discontinued based on "educational considerations." President Hurley at times asserted that such was the case. However, Regulation 4d(1) underscores that faculty governance bodies should be central to decision-making on academic restructuring; under Canisius's policy that body should have been the Academic Program Board (APB). According to President Hurley's August 3 letter to the chair of the faculty senate, the APB plays only an advisory role to the VPAA and "the ultimate authority for the discontinuance of academic programs rests with the Board of Trustees." While the APB's role is indeed advisory, there is a stated process by which its recommendations are supposed to be received and addressed. The administration did not follow this process.

Other procedural requirements of Regulation 4d mirror those of Regulation 4c. Regulation 4d(2) states that the faculty in programs being considered for discontinuance should be "promptly informed" and be allowed at least thirty days to respond to the proposal.[14] The administration did not afford this opportunity. Regulation 4d(3) states that the institution will make

13. The attorneys' April 19 letter offered the following comments on this sentence and the preceding sentence:

> The Draft Report alleges that Canisius failed to provide the Faculty with detailed financial information as required by AAUP regulations. . . . AAUP's failure to cite any of the material in the President's submission [to the investigating committee] describing the state of shared governance at Canisius again creates a distorted picture of what the Faculty of the College knew and when they knew it. The shared governance report submitted by President Hurley describes in detail a multi-year effort by the College administration and Faculty to deal with financial issues. Faculty were fully represented on appropriate committees and task forces throughout this period. Faculty representation on the College Budget Committee was expanded from two to four Faculty representatives. It operated transparently with information on enrollment, financial aid, personnel, and operating expenses shared with the Committee. Through the Faculty representatives on the College Budget Committee, the Faculty Senate has had access to current information on the College's financial performance and its annual audited financial statements. Clearly, the Faculty has continuously been in possession of all of the information that it would have needed to assess the College's financial condition and determine whether financial exigency was appropriate.

14. Cf. Regulation 4c(2)iii.

"every effort" to place affected faculty members in "another suitable position" within the institution.[15] It does not appear that any such efforts were made, though the lack of transparency and of shared governance processes make verification difficult.[16] Regulation 4d(4) states, "A faculty member who contests a proposed relocation or termination resulting from a discontinuance has a right to a full hearing before a faculty committee."[17] No such hearings occurred.

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President Hurley and the board of trustees, charged with the daunting task of addressing a budget crisis during a global pandemic, tried to stake out a middle ground between Regulations 4c and 4d. They neither declared financial exigency and followed the requisite procedures nor undertook a deliberative, faculty-led process of academic restructuring based on educational premises. Instead, they embarked on a hasty course of cuts and changes hoping for cost savings and improved enrollment, retention, and graduation rates.

Some observers might consider such a strategy an entirely reasonable approach for improving an institution's financial situation. A declaration of financial exigency acknowledges an extremely dire financial situation. Reluctance to declare it is understandable. Indeed, a public admission of financial distress could arguably worsen the situation by discouraging applications from students preferring to attend a college with a more predictable future. This line of thinking may also account for the creation of the FBWG, a closely controlled group where the administration strictly enforced confidentiality.[18]

By attempting to stake out a nonexistent middle ground, however, the college's administration and governing board bypassed faculty governance and mired the institution in division at a time when unity was critical. The administration disregarded the expertise of the faculty when most needed, ignoring established systems of evaluation and making ad hoc changes to the undergraduate curriculum based on hope rather than on an evaluative process.

This investigating committee finds that the administration and governing board of Canisius College, in its actions to discontinue and reduce academic programs and to eliminate faculty positions, disregarded normative standards of academic governance, as set forth in the *Statement on Government of Colleges and Universities*. In doing so, they degraded conditions for shared governance, weakened tenure, and damaged the climate for academic freedom.[19]

15. Cf. Regulation 4c(5).

16. Faculty members also report that some terminations were rescinded with no clear criteria or explanation, including one faculty member who was first told his appointment was being terminated and then was awarded an endowed chair.

17. Cf. Regulation 4c(3).

18. Commenting on this and previous similar statements, the attorneys' April 19 letter states as follows:

> Much is made in the Draft Report about the confidentiality that surrounded these discussions. . . . The AAUP's attempt to paint the process at Canisius as being one cloaked in darkness and secrecy is a complete distortion of what really occurred. At the opening meeting on June 4, the President suggested to the [FBWG] that to manage the information flow at a time when Faculty were growing increasingly anxious about the College's financial situation, the group should not be disseminating partial information or rumors. But the President acknowledged that the group should report to the Faculty when there was information to report and that sometimes the report would come from the President and sometimes the report would come from the chair of the Faculty Senate. The group agreed that that was a reasonable way to proceed. There was no objection from the FBWG. In fact, the group issued communications throughout the process, many times at the insistence of members of the FBWG who were hearing from members of the Faculty. Moreover, the President typically cleared his communications with the chair and vice chair of the Faculty Senate and, oftentimes, members of the group praised these communications for their honesty and transparency.

19. Commenting generally in its April 19 response on the entire draft text, the administration wrote:

> As we advised the AAUP and as the report indicates, Canisius College has been named a defendant in a lawsuit (the "Faculty Litigation") filed in New York State Supreme Court by the four remaining Faculty members who have not reached a settlement with the College on their termination. The issues raised in that litigation are the same as many of the issues discussed in the AAUP report. For this reason, Canisius denies generally the truth of the factual allegations made in the report (many of which appear to be the result of no real investigation and are, therefore, just wrong) and the conclusions drawn by the AAUP. We specifically reject the Draft Report's interpretation of AAUP principles as applied to the facts of this case.
>
> Additionally, on January 18, 2021, Canisius provided over 50 pages of materials in response to the request of the Investigating Committee. Those materials consisted of a letter and exhibits from this firm totaling 13 pages as well as a separate letter and several exhibits from President John J. Hurley of Canisius College. Incredibly, virtually none of the information set forth therein that objectively refutes a number of purported "findings" in the Report was even mentioned let alone discussed in the Report. We find these omissions to be both curious and troubling.

B. Illinois Wesleyan University

A self-described "independent, residential, liberal arts university," Illinois Wesleyan University, located in Bloomington, currently enrolls some 1,600 undergraduates served by 128 full-time and sixty-one part-time faculty members. The university's president since August 2019 is Dr. S. Georgia Nugent, previously president of Kenyon College as well as a senior fellow at the Council of Independent Colleges. The chair of the university's board of trustees is Mr. Timothy J. Szerlong, a retired corporate executive.

IWU faculty leaders sought the Association's assistance in mid-July 2020 after the board of trustees discontinued programs in anthropology, French, Italian, and religious studies and the administration indicated that it would be issuing terminal one-year appointments to nine tenured faculty members affected by the closures.[20] The administration asserted, and continues to assert, that, in taking this action, it and the board had hewed closely to Regulation 4d, "Discontinuance of Program or Department for Educational Reasons," of the AAUP's *Recommended Institutional Regulations* (1999 revision), which the faculty handbook incorporates almost verbatim.

As the Association's staff noted in its August 28 letter to President Nugent and Chair Szerlong, faculty sources had informed the AAUP that the yearlong process that culminated in these actions was "marred by repeated departures, on the part of the administration and governing board, from AAUP-supported standards of academic governance"; that the faculty through its representative bodies had "repeatedly protested these departures in formal resolutions and other written communications"; and that the administration and board had "either ignored or minimized the faculty's stated concerns." The letter identified four questions of particular concern:

1. whether the considerations that led to the program discontinuances were educational in nature, as required under Regulation 4d(1) of the *Recommended Institutional Regulations*;
2. whether "the faculty or an appropriate committee thereof" had identified the relevant educational considerations as required under Regulation 4d(1);
3. whether the administration had afforded those faculty members whose programs were selected for elimination thirty days in which to formulate a response, as required under Regulation 4d(2);
4. whether the administration had made "every effort" to find other suitable positions within the institution for the affected faculty members before issuing notice of termination, as required under Regulation 4d(3).

The letter stated that, based on the information available to the AAUP's staff, the answer to all four questions appeared to be no.

On Friday, September 11, the administration emailed a nine-page letter, signed by both the president and the board chair, detailing its response to the Association's August 28 letter. In it, President Nugent and Chair Szerlong provided an update on the nine faculty members to whom the administration had issued terminal one-year appointments:

- Two faculty members accepted tenured appointments in other academic departments at the university. One of these will be provided with retraining, at the university's expense. The other does not require retraining.
- Two faculty members elected to enter into a phased-retirement agreement.
- Two faculty members elected to continue teaching until they reach retirement age.
- Two faculty members elected to enter into separation agreements with the university. In each case the faculty member will receive compensation greater than that recommended in the Faculty Handbook guidelines, supplemented by an additional payment based on years of service.

Of the one remaining faculty member, Dr. Scott Sheridan, professor of French and Italian, the letter stated, "The University and that faculty member will make every effort during the terminal year to see if changing circumstances will present alternatives not available today."

On September 21, the faculty's Council on University Programs and Policy (CUPP) issued an eleven-page open letter replying to what it characterized as "numerous inaccuracies and misrepresentations" in the administration's September 11 letter to the AAUP and voicing "new concerns" that it said the letter raised.

The investigating committee spoke with Professor Michael Theune, CUPP vice-chair, on December 7; with Professor Molly Robey, CUPP chair in 2019–20, on December 15; with Professor Sheridan

20. Final notices, in the form of letters from President Nugent, were issued on August 31.

on December 17; and with President Nugent on December 18.

The faculty members interviewed report that the program-review process that led to the program cuts and appointment terminations began in fall 2019 with a board- and administration-initiated process that circumvented existing faculty governance bodies and procedures.[21] The administration created a Program Evaluation Task Force (PETF) composed of faculty members drawn mainly from CUPP and the Curriculum Council (CC) as well as an associate dean and the vice president of research, planning, and evaluation, both of whom were nonvoting, ex officio members. The administration charged PETF with undertaking a "comprehensive, intellectually sound evaluation" of IWU programs based mainly on educational considerations, although most of the criteria employed were explicitly financial.[22] The September 11 letter from President Nugent and Chair Szerlong to the AAUP states that "the PETF carried out exemplary analytic work" that reviewed "reports from all department and program heads, internal university data, and state and national data assembled by our external partner, Gray Associates," and ultimately "produced a strong and well-reasoned report." In its thirty-seven-page report, dated April 2, 2020, the PETF made scores of detailed recommendations, the most significant of which included converting the school of music and the school of art into departments and reducing the number of majors offered in each; replacing the major in educational studies with a minor; and discontinuing the majors in anthropology and French while retaining the minors. According to faculty members, the PETF recommendations were "designed to avoid the elimination of tenured positions" based on the president's initial assurance that such an action was "off the table."[23] In lieu of terminating tenured appointments, these recommendations would have led to cost savings primarily through the elimination of support staff and adjunct positions.

Matters appear to have gone off the rails after PETF submitted its report to the board of trustees in May 2020. In July, the board set aside PETF's recommendations and proposed instead the closures noted in the second paragraph of this section.[24] It is not entirely clear why. It is notable, however, that the board's decision preserved intact the school of art, the school of music, and the program in educational studies, which were, by all accounts, entities with low enrollments; that decision, according to interviewees (faculty members and President Nugent alike), was driven by unforeseen involvement by alumni and other constituencies opposed to any substantive modifications to those programs. Be that as it may, the PETF's report was effectively undercut by the introduction of so-called proformas—cost-benefit analyses accompanying the administration's response to the report that calculated how much each academic program generated or lost, taking into account its tenured and tenure-track salaries and number of majors. That response recommended the closure of the programs in anthropology and French and changed the verdict on the sociology program from "sustain" to "transform" without explanation. The proformas, CUPP wrote in its September 21 open letter, "considered the financial outlook of each academic unit if the administration's recommendations were accepted by the Board" but "were based solely on an academic unit's number of majors (the revenue) and number of tenured faculty members (the expense)—a significant departure from

21. The provost presented the program-review process to CUPP at its September 25, 2019, meeting. According to the minutes of that meeting, faculty members present voiced two concerns about the process: (1) it circumvented established faculty governance committees and (2) the board and administration were effectively imposing it, despite its being presented as a proposal. The minutes make evident that financial considerations were a major factor driving the process and that faculty members assumed that no tenured appointments would be terminated as a result of it. One faculty member asked the provost how program closures could result in cost savings without "firing any tenured faculty members," citing President Nugent's assurance at a faculty meeting a week earlier that the program review would not result in terminations of tenured appointments. Instead of contradicting the faculty member's assertion, the provost and associate provost stated that some savings would come from retirements, reductions in "equipment costs, part-time teaching compensation," and building-maintenance expenses.

22. In a July 9, 2020, email message to the IWU faculty, PETF informed the faculty of resolutions it had sent to the governing board and the administration that same day. Among them was this one: "The data and rubric provided to PETF were based upon financial, not educational, considerations, and PETF made its recommendations principally on those considerations."

23. See footnote 21.

24. One of the involved faculty members commented, "When faculty raised concerns about the data presented to the Board at the May Board meeting, the trustees decided to form a work group made up of trustees and faculty to look at additional data before taking a final vote in July. Since the vote was supposed to take place in May, the delay of the vote and additional work group seems worth noting."

the somewhat more finely-grained financial considerations that were supplied by the process's consulting firm, Gray Associates." Among the curious features of this case is the phenomenon of faculty members' preferring the criteria of external consultants to the apparently reductive criteria of cost and revenue applied by the administration.

All parties agree that after the May and July board meetings, the faculty felt betrayed; faculty members interviewed by the committee repeatedly used the terms "derailed" and "hijacked," seeing the board's action not as a legitimate disagreement between the faculty, on the one hand, and the administration and board of trustees, on the other, but as an unwarranted substitution of one set of criteria with another, a wholesale and unilateral change in the rules of the game.

Central to that sense of betrayal is the faculty's belief that the outcome was facilitated in large part by President Nugent's statement in the September 18, 2019, faculty meeting that the review would not result in terminations of tenured faculty appointments. The CUPP letter cites the minutes of that meeting: "Program review of academic and non-academic units will be coming. Process will be announced soon. Will include outside consultants. Four possible outcomes: investing more, continuing as is, modify, discontinue some action or program. *Not terminating tenured faculty*" (emphasis added). President Nugent reported to this committee that, in her recollection, she had said that the point of the process was to review programs, not to cut faculty positions; that she did not believe that this statement amounted to an ironclad promise; and that, in any case, the financial prospects of the university looked rather different in summer 2020 than they had in fall 2019. The CUPP letter, however, calls President's Nugent statement a promise, asserting, "It likely was the foundational promise that got faculty to participate in the program evaluation process initially."

Faculty leaders also informed the investigating committee of their belief that the May board of trustees meeting, and the follow-up meeting called for July, substituted financial for educational considerations in the review of programs and that the introduction of the proformas was evidence that, in the words of the CUPP letter, "despite any claims about decisions being made for primarily educational reasons, it's actually quite clear that financial reasons ruled the day." However, the CUPP letter also suggests that this possibility was there from the start, citing "The IWU Imperative," a September 19, 2019, email message in which board chair Szerlong called for program review in terms that seem heavily weighted toward financial considerations: "The first priority of the Board of Trustees is to ensure Illinois Wesleyan remains a successful institution. The foundation for this success is fiscal integrity. Current and projected budgets fail to provide this solid foundation; more simply stated, our revenue does not cover our expenses. Change to university operations must be initiated to restore this fiscal balance. . . . This approach mandates program review, vigorous pursuit of organizational or structural change to adjust to a reduced student population, and identification of offerings that will attract new students, and better deploy our university resources."

The investigating committee asked President Nugent whether the concerns of the faculty were justified. She replied, not by denying that financial considerations were in play, but by arguing that at a small, private, tuition-dependent institution such as IWU, it is impossible in practice to separate financial from educational concerns. Faced with data that suggest the institution would be forced to declare a state of financial exigency within seven years, President Nugent said, the faculty and administration are impelled to try to determine how IWU can continue to attract students while maintaining its character as a liberal arts university. Regulation 4d stipulates that "'educational considerations' do not include cyclical or temporary variations in enrollment. They must reflect long-range judgments that the educational mission of the institution as a whole will be enhanced by the discontinuance." President Nugent reports that the enrollment trends at IWU are not cyclical or temporary, but part of larger, long-term demographic shifts occurring nationwide that are putting pressure on all but the most elite institutions and rendering small, private liberal arts institutions especially vulnerable.

The educational mission of IWU, according to President Nugent, can be maintained—or enhanced—only by curricular decisions that uphold the academic integrity of the institution while appealing to a student body drawn from a regional pool of applicants whose options include nearby Illinois State University, more than ten times the size of IWU with an in-state tuition rate less than one-third that of IWU. Whether this rationale informed the administration's decision to introduce proformas to the board of trustees and the board's decision to set aside the faculty's recommendations is unclear. If this reasoning was the basis of the actions, however, an obvious question is whether Illinois Wesleyan could have made the decisions to discontinue programs during that seven-year window through a gradual process that involved existing faculty governance bodies and procedures.

It is also not clear what role the pandemic played in the board's decision. In the course of its eleven pages, the CUPP letter does not mention COVID-19 or its impact. In interviews, faculty leaders and President Nugent reported that the pandemic was not a consideration in the program review but that it did affect the university's financial outlook in such a way as to make it impossible to create new positions for faculty members displaced by program cuts. President Nugent's and Chair Szerlong's September 11 letter to the AAUP's staff alludes to this position without going into specifics: "What your letter quite presumptuously labels 'a bait-and-switch scam' is more accurately characterized as an effect of the global pandemic. It was impossible to know, in September or November or February, the extent to which the world would be altered. What has changed, since the inception of the review process, is not the intention of the administration, but unanticipated upheaval in the environment." It is entirely plausible that hopes and plans to create new programs at IWU had to be scuttled as COVID-19 swept through every aspect of life on the planet. But even so, it remains unclear why the university has not placed Professor Sheridan in another suitable position.[25]

The committee was apprised of a December 1, 2020, email message from Professor Carolyn Nadeau, chair of the Department of World Languages, Literatures, and Cultures, to President Nugent and Dr. Mark Brodl, provost and dean of the faculty. In that message, Professor Nadeau states, "I can say with absolute certainty that WLLC has definite needs that Scott can fill. Although the French major and French and Italian minors will finish out over the next four years, WLLC still has several courses that need to be taught and Scott would be the perfect faculty member for the job." The email proceeds to enumerate such courses, proposing a "regular rotation" of six courses per year. Additionally, on August 21, 2020, Professor Sheridan sent to Provost Brodl and the director of human resources a memorandum detailing five positions for which he might plausibly be considered, the most promising of which, it would seem, was that of associate dean for curricular and faculty development. "Given that this rotating, developmental position will be vacated at the end of this academic year, I would like to be considered for it," Professor Sheridan wrote. "When I last applied to the Associate Dean position in fall 2016, CUPP selected me as a very close second to the colleague who currently holds the position." Professor Sheridan also mentioned his "extensive committee work (chair of PAT, CC, chair of Academic Standards, Vice-chair of CUPP)" and his "important leadership roles in chairing a department and directing an interdisciplinary program."

The committee member who spoke with President Nugent asked if she and Provost Brodl were pursuing either of these options. President Nugent responded that Professor Sheridan's case remained a subject of ongoing concern and that she would be meeting with Provost Brodl the following week to discuss it further. Faculty leaders, for their part, were not reassured that, as President Nugent and Chair Szerlong's September 11 letter put it, "even if the worst result comes to pass, the number of affected faculty members will not be

25. The meaning of "another suitable position" is one of the matters in dispute. IWU administrators correctly point out that its meaning is not self-evident, but they seem to have been working with a remarkably elastic definition of the term from the outset, one that would have included positions at other institutions—an interpretation that is certainly not contemplated in Regulation 4.

In a meeting with Provost Brodl on August 14, 2020, Professor Sheridan read a prepared statement outlining "the university's offers . . . thus far":

(1) To offer me the opportunity to apply for open positions in disciplines outside of the academic field I have devoted my education and over 30 years of teaching to;
(2) To offer to help me find employment outside of the university;
(3) To offer me retraining without specifying the parameters or purpose;
(4) To offer me the opportunity to apply to staff positions without the benefit of tenure or rank;
(5) To offer me the opportunity to brainstorm with Academic Affairs about other areas I could contribute to at IWU, without the promise of the real possibility of the creation of a position.

This statement accurately reports the offers made at the previous day's meeting between Professor Sheridan and the human resources department at which Professor Sheridan was apprised of available positions at IWU in the departments of accounting and economics and was asked if there were other positions outside of IWU for which the university could help him apply. The notes for the August 13 meeting include the following: "Sheridan stated that the word 'suitable' found in the [*Recommended Institutional Regulations on Academic Freedom and Tenure*] would no doubt become a contested term, given that offering staff positions without tenure or rank to senior faculty members was certainly not in keeping with either the spirit or the letter of the [regulations'] contractual language, which was meant to preserve and protect the earned privileges of tenure."

Professor Sheridan's sense that the word "suitable" would become a contested term proved to be prescient.

greater than one." For them, it was a matter of principle: *if this can happen to one of us, it can happen to any of us.* The effect on faculty morale at Illinois Wesleyan University has been baleful. This, too, is something about which all interviewed parties agreed.

On February 3, 2021, the Curriculum Council brought forward motions to revise the international studies program, "a program," according to Professor Theune, "both greatly affected by the Board's firing of tenured professors and where it was believed that faculty with terminal contracts might still be relocated." Professor Sheridan is a former director of that program. Nevertheless, he has not been considered for relocation to it.

* * * * * *

The investigating committee finds that the administration and governing board of Illinois Wesleyan University, in taking action to close four academic programs and terminate nine tenured faculty appointments in stated adherence to Regulation 4d of the Association's *Recommended Institutional Regulations on Academic Freedom and Tenure*, departed from AAUP-recommended principles and standards in several respects. In disregard of the *Statement on Government of Colleges and Universities*, the administration and governing board did not engage in "adequate communication" regarding the possibility that the program review might result in terminations of tenured appointments; they failed to honor existing provisions in the faculty handbook designed to preserve the faculty's "primary responsibility" for curricular decision-making; they imposed their own program-review process despite the faculty's primary responsibility for such matters; and they declined to provide "compelling reasons stated in detail" for rejecting the PETF's final recommendations. In disregard of the 1940 *Statement of Principles on Academic Freedom and Tenure* and the derivative Regulation 4 of the *Recommended Institutional Regulations*, the administration and governing board have failed to make "every effort" to find another suitable position within the institution for the single remaining displaced faculty member.[26]

C. Keuka College (New York)

Keuka College, a private undergraduate and graduate residential college founded in 1890 and located in New York's Finger Lakes region, enrolls 1,116 undergraduate residential students, fifty-two graduate residential students, 413 undergraduate and 196 graduate "adult and online" students, and approximately 2,500 overseas students (through programs in China and Vietnam). Its faculty consists of about ninety full-time and 320 part-time members. In 2019 Keuka College's endowment was $14.6 million. Ms. Aqua Y. Porter, a former vice president of business transformation for the Xerox Corporation, is chair of the college's board of trustees. Ms. Amy Storey is the president. President Storey began her employment at Keuka College in 2013 as the institution's chief advancement officer; she was promoted to vice president for advancement and external affairs and served ten months as interim president before being appointed Keuka's twentieth president on July 1, 2019. President Storey declined the committee's invitation to be interviewed.

Dr. Steven Hallam, a tenured professor of psychology with twenty-nine years of service to Keuka College, was informed in a July 1, 2020, videoconference with Dr. Bradley Fuster, provost and vice president for academic affairs, of the termination of his appointment, effective that same day. Provost Fuster did not provide Professor Hallam with reasons for the administration's action but stated that it was "not performance related" and that the board of trustees had "suspended all processes" related to the faculty handbook. A follow-up letter, also of July 1, contained a general release of legal claims and a severance agreement, which Professor Hallam did not sign, offering three months' severance salary to be paid within thirty days. Eleven additional tenured or tenure-track faculty members were likewise notified of the termination or nonrenewal of their appointments that same day.

The college community was informed of the administration's unilateral decisions in two July 1 email messages—one from the current and previous board chairs and one from President Storey. The first message from the board chairs began as follows: "Recently, the Board met and made decisions to

26. In a joint letter of April 19 responding to the AAUP's invitation for comment on the draft text of this report, President Nugent and Chair Szerlong wrote, "The draft . . . presents an incomplete factual record, relies on hearsay, and furthermore, misrepresents the facts in a number of ways. Not only does it accept without question faculty assertions that we believe to be inaccurate, but in doing so the report chooses to reiterate and emphasize particularly emotional and inflammatory language, rather than presenting an objective account. For these reasons we reject the report in its entirety."

improve the College's long-term viability. Next year's projected $7-million budget shortfall caused by the COVID-19 pandemic requires us to take bold, unprecedented action." This bold, unprecedented action amounted to enacting a one-year suspension of the faculty handbook's procedures governing the termination of appointments and the closure of academic programs. The board's message continued:

> As is common in higher education, the Keuka College Board of Trustees approves process and policy recommendations from the faculty in the form of the Keuka College Faculty Handbook. While these policies have generally served our institution well as it makes decisions in ordinary times, it has become clear that the policies are not designed to accommodate the current, unimaginable environment of our College, our nation, and our world.
>
> After much deliberation and analysis, the Board of Trustees has voted to suspend the processes outlined in the Keuka College Faculty Handbook addressing the closure of academic programs and terminations of Faculty appointments, including appointments held by members of the Faculty with continuous tenure, from now until July 1, 2021.
>
> Please know that the decision was motivated neither by an objective to erode tenure at Keuka College—tenure was in fact approved for four faculty members earlier this spring—nor to interfere with the expression of academic freedom. Ultimately, the College cannot financially afford to follow the processes outlined for faculty separation. To do so would be risking the educational futures of more than 2,500 students across the world, the livelihoods of more than 300 employees, and the pride of more than 13,000 alumni.

The suspension of these handbook provisions, both of which ensure the faculty's primary role in the educational mission of the institution, permitted the board to terminate faculty appointments in the absence of either a declaration of financial exigency or a bona fide formal discontinuance of a program for educational reasons and, furthermore, deprived affected faculty members of important due-process rights as required in the Association's *Recommended Institutional Regulations on Academic Freedom and Tenure*, which the Keuka faculty handbook comprehensively incorporates.

Just as troubling was the board's determination that handbook regulations governing severance pay—not declining enrollments, not the rising cost of tuition, not increasing student loan debt, not even the impact of the coronavirus—constituted a singular threat to the college's survival, thus warranting the abolition of faculty governance and the protections of tenure.

The Faculty Liaison Committee (FLC) reported in the August 18, 2020, faculty meeting that it had not been consulted about the program and position reductions and was not aware of them until an hour before they were announced on July 1. As its name suggests, the FLC functions as "a liaison between the Academic Faculty and the other components of the College" whose chair the president and provost will advise "of issues under consideration that come within the purview of the FLC." The faculty handbook furthermore upholds an ethos of shared governance explicitly grounded in AAUP-supported principles: "The Faculty and the President acknowledge that a positive working relationship between the Faculty and administration is vital for maintaining and improving the quality of Keuka College. To enhance coordination, communication, and consultation, the FLC and the administration affirm the principles below. These principles are in conformance with the AAUP principles and establish shared governance processes."

President Storey's July 1 email, which followed on the heels of the board's communication, provided details on the administration's decisions. The president's message stated, "The best thinking in national higher education finance is to plan for a 10-25% decline in enrollment revenue as a result of the pandemic. When combined with other shortfalls (e.g., no on-campus summer conference business, an uncertain economy causing less philanthropic giving and a lower endowment draw, as well as strained U.S.-China relations), the College is facing a gap of more than $7 million between projected revenue and typical expenses for the coming fiscal year."

To close this anticipated budget gap, the board had authorized multiple measures. The first was the elimination of six "undersubscribed" academic programs—biochemistry, criminal justice administration, mathematics, medical technology, nursing education, and organismal biology. The email stated, "For some of these programs, because of the looming revenue shortfall that threatens the College's viability, the Board has exercised its authority to do so without the typical recommendation of the faculty as a whole."

According to faculty members who served on the Curriculum Committee, which, under the faculty handbook, is responsible for the review and approval of all changes to academic programs, the provost had earlier asked the committee for its assessment of the viability of five programs the administration considered not "financially sustainable." Using data provided by the provost, including enrollment numbers, students graduated, and cost of instruction, the committee narrowed its focus to three programs—biochemistry, criminal justice administration, and medical technology—and sought additional information on course dependencies, enrollment history, and impact on other programs. Faculty members on the committee noted that financial information was limited.

After its review, the Curriculum Committee brought three motions to the full faculty for a vote at the May 5, 2020, faculty meeting: to maintain the biochemistry program but to close the criminal justice and medical technology programs. All three motions carried. Curriculum Committee members reported to the investigating committee that the administration did not respond to the faculty's recommendations until the July 1 announcement. Only then did the faculty realize that the board, in eliminating the six programs, had acted unilaterally in all but two instances and had explicitly rejected the committee's recommendations and the faculty votes. Faculty members on the committee described a "disconnect" between the expression of the faculty's will and the provost's goals and tactics by which faculty governance was ultimately circumvented.

President Storey's July 1 email only briefly addressed the termination of appointments: "In addition to the employee separations necessitated by the closure of undersubscribed programs, the College has made budget-related faculty and staff separations." At no point to date has the college indicated how many faculty positions were eliminated because of program closures and how many because of cost alone, nor what specific criteria were used to identify the latter. That the psychology program was not one of the six shuttered by the board (in fact, psychology is advertised on the college's website as one of its top five programs and incorporates three concentrations in the major as well as a minor) suggests that Professor Hallam's position was eliminated for financial reasons. We can be certain, however, that the decision did not honor his tenured status, his rank, or his length of service.

The board implemented additional cost-saving measures in order to address the college's projected $7 million budget deficit: the indefinite suspension of four athletics programs, 8 percent across-the-board salary reductions, two weeks of unpaid furloughs for all members of the faculty and staff in 2021, and a reduction in retirement contributions. Faculty members informed the investigating committee that the potential 10–25 percent enrollment revenue decline that had been projected in July did not come to pass. In fact, they reported, not only had students been successfully brought back to campus for in-person instruction but fall enrollment numbers had slightly exceeded the college's targets. Indeed, with respect to the college's financial condition, a September 8, 2020, article in a local media outlet quoted President Storey as stating, "The College has run budget surpluses the past two fiscal years and is on track to exceed the authorized budgeted surplus this year, so our fiscal house is in order."[27] In other words, despite a global pandemic that continued unabated, Keuka College was "on track" to exceed its authorized budgeted surplus in 2020–21. The proud announcement of a budget surplus, and the institution's "financial health" and "fiscal order," invites the obvious question whether that surplus may have been sufficient for Professor Hallam and his eleven colleagues to have retained their appointments after all.

Professor Hallam sought the Association's assistance shortly after July 1, the date on which his appointment was terminated. The AAUP's staff wrote to President Storey on July 14 to convey the Association's concerns in his case and to advise the president regarding AAUP-recommended standards governing the termination of appointments for financial reasons. The letter concluded that, to the staff's knowledge, the college's governing board had not declared a state of financial exigency and the administration had followed none of the Association's recommended procedural standards in acting to terminate Professor Hallam's appointment.

A July 23 response from outside counsel Ms. Mary Jo Korona maintained that the college "had been engaged in efforts to respond to the financial burdens anticipated and/or already imposed by the pandemic" and that, "as time and the pandemic wore on, the College determined that . . . drastic and immediate measures would be needed to close a significant

27. Jeff Platsky, "Some Upstate NY Colleges May Not Survive," *Chronicle Express*, September 8, 2020, https://www.chronicle-express.com/story/news/2020/09/08/some-upstate-ny-colleges-may-not-survive/5747211002/.

budget gap." The letter went on to describe how the administration undertook a program-review process to identify "undersubscribed programs" and to analyze each division "in terms of cost of instruction." With respect to the elimination of Professor Hallam's tenured position, the letter concluded, "The College engaged in decision-making that prioritized the continued viability of the institution over some individual interests."

The staff's August 4 response reiterated the Association's concerns regarding the absence of a declaration of financial exigency and the lack of due-process protections afforded Professor Hallam. The letter concluded by announcing the staff's intention, absent a satisfactory resolution, to recommend the case for investigation in view of the apparent implications for academic freedom and shared governance.

Attorney Korona's August 19 reply took issue with the Association's "characterizations" of events leading up to the termination of Professor Hallam's appointment and denied that the adverse action was "improper" in any respect. The letter maintained further that "the decision that led to the termination of Dr. Hallam's tenured position was made in direct response to the pandemic" and was "part of a comprehensive plan expressly contemplated and permitted by the 2019 Faculty Handbook." It is unclear what faculty handbook provisions the letter refers to, since, as noted above, the handbook incorporates almost verbatim Regulation 4c, "Financial Exigency," and Regulation 4d, "Discontinuance of Department or Program for Educational Reasons," of the AAUP's *Recommended Institutional Regulations on Academic Freedom and Tenure*.

With the AAUP's executive director having authorized an investigation, the staff so informed the administration and the board in a September 14 letter, which closed by inviting their cooperation. On September 23, Keuka College issued a press release in response to the Association's announcement of this investigation. In it, President Storey averred that the authors of the *Statement on Government of Colleges and Universities* could not "have foreseen a financial environment like the one in which modern-day institutions currently operate" and concluded that "it would be the ultimate dereliction of duty for this administration to risk institutional closure and the devastating impact that action would have on its faculty, staff, students, alumni, and the surrounding community by exhausting our scant financial resources to strictly follow AAUP guidelines during these unprecedented times. Neither faculty nor the principles of shared governance are the problem. The problem is the immense financial challenges institutions across the country are facing because of the pandemic."

The faculty at Keuka College believed otherwise. In the wake of the administration's suspension of the handbook provisions, the chair of the Faculty Liaison Committee at the August 2020 faculty meeting led a robust discussion of the deleterious effects of the board's decisions on shared governance and faculty rights. The FLC proposed the following motion on reinstating the suspended portions of the handbook:

> The FLC supports the President's goal of prudent financial management, and we support the temporary pay cuts and recognize the current need for furloughs; but the FLC believes that further reductions could have been achieved without suspending portions of the Faculty Handbook. Hence, we will ask the Faculty to vote on the following motion.
>
>> Whereas, The AAUP has stated that "AAUP-supported policies—most notably those that recognize the special challenge of 'financial exigency'—are sufficiently broad and flexible to accommodate even the inconceivable disaster";
>>
>> Resolved, That the Keuka College Faculty requests that the suspended sections of the Faculty Handbook be reinstated.

The motion passed. The committee chair concluded the discussion with this statement: "I hope the message that will be communicated is that we are a strong faculty who are utterly committed to do what it takes. But we need to be treated fairly as well." Unfortunately, the board and the administration have not honored the faculty's request.

* * * * * *

The investigating committee finds that the governing board and administration of Keuka College—by unilaterally suspending critical portions of the faculty handbook, closing academic programs and departments, and terminating faculty appointments—violated the principles of sound academic governance set forth in the *Statement on Government of Colleges and Universities*. The committee further finds that the governing board and administration—by taking these actions without declaring financial exigency and by failing to afford academic due process to tenured faculty members, to respect tenured status in selecting appointments for termination, and to provide affected faculty members with adequate notice or severance salary—contravened the 1940 *Statement of Principles on Academic Freedom and Tenure* and damaged, if not destroyed, the college's tenure system and the academic freedom it protects.

D. Marian University (Wisconsin)

Located in Fond du Lac, Marian University is a Roman Catholic institution with an undergraduate enrollment of about 1,400. The university had experienced budget shortfalls for years, so when the seventy-odd full-time faculty members at the university received their 2020–21 faculty contracts on March 27, 2020, some three weeks after the declaration of COVID-19 as a global pandemic, no one was surprised that the contracts contained the usual stipulation that the agreement was contingent on the board of trustees' approval of "the budget for the course(s) provided for in [the] agreement." Absent such approval, the contracts stated, the administration would notify faculty members within five days of the board's decision regarding the status of their appointments.

Two months later, at the May 27 board meeting at which trustees were scheduled to vote on the budget, then-acting university president Michelle Majewski declared an "enrollment emergency," a "sudden or unplanned progressive decline in student enrollment within a program, the detrimental effects of which are too great or rapid to be offset by normal procedures outlined in the Handbook," as defined by section 6.5 of the faculty handbook. The governing board, however, did not declare the institution to be in a state of financial exigency.

With the announced enrollment emergency in place, the board suspended handbook procedures and authorized the closure of some nine programs, including undergraduate programs in music and music industry; minors in art history, music, and studio art; and graduate programs in educational administration and leadership, resulting in the termination and nonrenewals of the appointments of nine tenured or tenure-track faculty members. These actions, according to a June 2 university press release, were "proactive steps in anticipation" of the impact of COVID-19 on the university's budget and enrollment projections.

At a June 3 virtual "town hall meeting," according to a summary of the meeting, administrators maintained that "under other circumstances, the opportunity to involve faculty, of course, is the preferred path, but these are not normal circumstances." When the faculty asked how the handbook "justified" terminating tenured appointments, administrators maintained that the "alternative" was "to close the University," adding, "We have no intention of closing the University." And in answer to faculty questions about the criteria used for selecting programs to be closed and faculty positions to be eliminated, administrators stated simply, "We examined programs with low enrollments and decreasing enrollments."

Many of the faculty members whose positions were eliminated had a decade or more of service to the university, including Professor Mark Merline, a tenured professor of art who had taught at the institution for twenty years. In a July 16 email message seeking the advice and assistance of the AAUP's staff, Professor Merline reported that he had been "abruptly dismissed with no warning." In a June 1 teleconference with the president and the provost, Professor Merline learned that the termination of his position had been effectively finalized fifteen days earlier. According to the administration, none of the terminations was carried out for performance-related reasons; all were "strictly financial." Yet the administration presented no data to show why certain programs and faculty positions were selected for elimination.

By letter of July 29, the AAUP's staff advised President Majewski regarding AAUP-recommended principles and procedural standards on academic governance, financial exigency, tenure, and academic due process. The letter noted that the college's governing board, in reaching the decision to terminate the services of the faculty members, had not declared financial exigency and had not followed any of the requisite procedures specified under Regulation 4c, "Financial Exigency," of the *Recommended Institutional Regulations on Academic Freedom and Tenure*.

In her brief August 5 reply, President Majewski stated, "Marian University, Inc., disagrees with both the factual and legal assertions contained in [the AAUP's] letter."

Responding by email of September 9, the AAUP's staff stated that the administration's reply appeared to confirm rather than allay the Association's concerns about the lack of appropriate procedures. The email message went on to inform the administration that, absent the prospect of a suitable resolution and given the severity of apparent departures from AAUP-supported standards, the staff would recommend to the Association's executive director that she authorize an investigation at Marian University. In a September 14 letter, the staff informed the administration and the board that the investigation had indeed been authorized, and the letter closed by inviting their cooperation with the investigation.

President Majewski responded by letter of September 28, stating that the AAUP's "purported 'investigation' lacks both a factual and legal basis"; that the "AAUP's public relations campaign to disparage" Marian and the other "fine educational institutions" was "inherently unfair and without basis"; that the university in its actions had complied with its faculty handbook and "all applicable Wisconsin employment laws"; and that the "AAUP appears to be willfully ignoring the extraordinary circumstances brought about by the COVID-19 pandemic" that "compelled" institutions like Marian University to take the actions it took. "While you indicated you would welcome us providing a name and contact information of the person I would designate to assist the committee in arranging interviews," she wrote in ending her letter, "I respectfully decline this offer."

The principal parties with whom this investigating committee spoke and the documents it reviewed reveal an administration that approached program review in a haphazard manner largely without the benefit of faculty consultation. To cite one example, in her June 1 letter to Professor Merline, President Majewski gave the following explanation for terminating his appointment: "After considering your Program's continuing low enrollment, together with the President's declaration of a state of enrollment emergency justifying a permanent layoff, the Board of Trustees determined that the educational mission of Marian University as a whole will be strengthened by the elimination of the Program." However, according to Professor Merline, the art program was not underenrolled nor was it losing money, and the administration had never presented any enrollment data to the faculty.[28] Indeed, in early March 2020, in response to the ongoing financial difficulties at Marian, members of the faculty presented a "curriculum-efficiency" proposal that did not include layoffs. There is no evidence to suggest the administration gave serious consideration to any faculty recommendations.

* * * * * *

The situation at Marian resembles that of other institutions discussed in this report—a university that has experienced financial problems for some time suddenly suspends its normal processes and ignores any obligations to observe AAUP-supported governance standards to facilitate making quick personnel changes, including appointment terminations. Indeed, many of these changes may have been under consideration previously, but now the pandemic provided an "alternative explanation" for what may have been long-standing goals of cost-cutting, achieving "lean operations," and reducing student choices—in short, hastening the arrival of the corporatized university. AAUP-supported standards of shared governance and academic freedom serve different ends than those of the corporate university: improving educational quality by bringing professional expertise to bear on curricular decision-making and by protecting academic freedom though academic due process and tenure. We hope that Marian University has not permanently abandoned these principles and goals, the importance of which it has previously affirmed.[29]

The investigating committee finds that, in acting to close programs and terminate the appointments of Professor Merline and other faculty members, the administration and governing board of Marian University disregarded principles and standards of academic governance articulated in the *Statement on Government of Colleges and Universities* as well as the principles and standards of academic freedom and tenure set forth in the 1940 *Statement of Principles on Academic Freedom and Tenure*.

E. Medaille College (New York)

On April 15, 2020, President Kenneth Macur of Medaille College, a private liberal arts institution

28. As at other institutions where the drivers of the crisis were financial, the administration has yet to provide evidence to substantiate an enrollment emergency and particularly one affecting the programs in which faculty positions were eliminated.

29. Section 1.3 of the faculty handbook, for example, states that "Marian University recognizes, supports, and defends the principle of Academic Freedom, as articulated in the American Association of University Professor's 1940 *Statement of Principles on Academic Freedom and Tenure*" and quotes that statement at length. Section 1.3 also proclaims the institution's commitment to shared governance: "Along with Academic Freedom, the institution recognizes the essential import of the primacy of faculty in academic matters in which their particular expertise and competence should guide the institution. According to the . . . *Statement on Government of Colleges and Universities* (1966), 'the faculty has primary responsibility for such fundamental areas as curriculum, subject matter and methods of instruction, research, faculty status, and those aspects of student life which relate to the educational process'. . . . The policies and procedures set forth in this handbook recognize and support the primacy of the faculty in academic matters in the context of the principles of shared governance."

based in Buffalo and enrolling approximately 2,200 students, sent the Faculty Council, the executive committee of the college's Faculty Assembly, a proposal to address the "need for the College to move quickly to respond to the current budget crisis exacerbated by the COVID-19 pandemic and the multiple states of emergency." To do so, he would, as he had informed the council a week earlier, invoke a provision of the faculty handbook that permitted the president, after consultation with the Faculty Council, to petition the chair of the board of trustees to suspend the handbook in response to "natural disasters, acts of God, declared states of emergency or other emergency situations."

In his proposal, the president stated that, despite the administration and the faculty council's having, "in the spirit of cooperation," already discussed potential revisions to the handbook based on several principles of agreement, he now "believed that this [was] an opportunity to do more than just tinker around the edges." Although the cited provision permitted only the suspension of the handbook, the proposal called for the document's extensive revision. "We need to be bold and decisive," the president wrote, because council-supported revisions did not "go far enough" to "accomplish the bold changes" needed. Listed among proposed "bold changes" were "eliminate tenure" and "re-work the grievance process" to prohibit its applicability to "hiring/firing issues."

"Let me talk about the 'big rock'—tenure," President Macur continued. "There is an old saying that good faculty don't need it and bad faculty don't deserve it."

In an April 27 letter, the Faculty Council called upon the board to deny the president's request and wait for "a mutually agreed upon proposal that more responsibly and viably addresses [the] current fiscal crisis," one that followed "the path of shared governance." With respect to the college's financial situation, the council alleged "irrefutable evidence that the College's ongoing fiscal crisis—while, of course, exacerbated by the current pandemic and consequent states of emergency—clearly predates these circumstances and is in fact the direct result of budgetary mismanagement and administrative failings going back several years."

According to faculty members on the Faculty Budget Committee, during President Macur's six-year tenure, the school had only one year of positive net income, even though his predecessor had substantially reduced fixed costs and balanced the budget. For fiscal year 2020, the college had projected a net loss of $6.5 million, the largest deficit in almost a decade, well before anyone had heard of COVID-19. The pandemic actually brought a substantial reduction in that deficit when the college received a significant appropriation under the Coronavirus Aid, Relief, and Economic Security (CARES) Act, and projected enrollment declines were lower than originally feared. President Macur and members of his cabinet ceased meeting with the Faculty Budget Committee in April 2020, after which the committee played no role. Its members were not given access to the 2021 fiscal year budget—approved by the board in September 2020—until December 2020.

The council's letter called the president's plan to suspend the handbook "an illegitimate effort to seize upon the current pandemic as a convenient opportunity to force College employees—both staff and faculty—to bear an undue burden in rapidly remedying the institution's budgetary shortfall that has been years in the making." Nonetheless, it continued, "we recognize the very serious and imminent need for substantial budget cuts, including academic programs and faculty lines." The letter ended with an appeal to the administration and governing board to work "collaboratively" to resolve the crisis.

That same day, however, council members learned that the president had received board approval to invoke the "Act of God" provision even before making his April 15 proposal. Several weeks later, the entire Faculty Assembly, the Faculty Council's parent body, voted overwhelmingly against negotiating further revisions to the handbook while it remained suspended.

Members of the Faculty Council sought the AAUP's advice and assistance in late April. They contended that the decision to suspend the handbook was not preceded by any demonstration that the financial emergency was of such magnitude that it could not be addressed by existing policies. They also questioned the adequacy of faculty participation in the discussions preceding the administration's action.

The AAUP's staff wrote to President Macur on April 29 to convey the Association's concerns and to highlight applicable AAUP-recommended principles and procedural standards on academic governance, financial exigency, tenure, and academic due process. His May 12 response sought to justify the administration's actions, claiming that the Faculty Council had not "provided any suggestions that afford any immediate or long-term fiscal relief" and, further, that "their ideas suggest that faculty should make administrative decisions on financial condition, organizational restructuring, and the like," a notion that President Macur seemed to consider self-evidently preposterous.

In responding to the staff's request for comment on the president's May 12 letter, the Faculty Council stated that the president had not adequately explained why the administration believed it was necessary to suspend the faculty handbook, along with its faculty governance procedures, in order to address the financial crisis. With respect to the president's contention that the faculty had been regularly informed about Medaille's financial condition, council members contended that the administration had repeatedly failed to respond to budget committee requests for audited financial statements.

On June 11, the president sent the Medaille faculty an update on academic programs, describing a review process undertaken six weeks earlier by an administratively appointed Program Prioritization Task Force consisting of four administrators and two faculty members. The email explained that the process had followed the "nationally recognized Dickeson Model of program review" in which the task force "led the data collection, analysis and deliberation process" and program directors and department chairs had input. The message announced that programs in marriage and family therapy, health information management, and homeland security would be eliminated, while programs in e-sports management, accounting, and social justice were "under development."

The AAUP's previous experience with the so-called Dickeson Model leads to the suspicion that any administration employing the model is unlikely to value shared governance and academic freedom.[30] However, according to reports by faculty members involved, even that model served mainly as "a fig leaf" for a process that was largely arbitrary and involved no genuine faculty participation. According to a faculty participant, "It was supposed to follow the Dickeson Model but did not even follow that."

Several weeks later, Professor Erika Hamann, an assistant professor in the Department of Interdisciplinary Studies who had served as a full-time faculty member for fourteen years, and Professor Keith Klostermann, a tenured associate professor in the Department of Counseling and Clinical Psychology with nine years of service, sought the AAUP's assistance after they received termination notices effective June 2020. The five additional full-time faculty members whose services were terminated did not seek the AAUP's assistance. The administration gave the affected faculty members no explanation for its action to terminate their services. According to faculty members who met by teleconference with the investigating committee, only half of the affected faculty members held positions in programs that were eliminated, leading them to infer that the actions against them were at best arbitrary and at worst motivated by vendettas or efforts to silence opposition.

The administration soon presented the Medaille faculty with a revised handbook and employment agreement for its review and approval. The revised handbook allowed faculty members awarded tenure prior to July 2020 to retain that status, but their employment agreements would now "contain grounds

30. The AAUP's 2013 investigating committee report *Academic Freedom and Tenure: National Louis University* contains the following note on Dr. Robert C. Dickeson, author of *Prioritizing Academic Programs and Services: Reallocating Resources to Achieve Strategic Balance* (1999):

> The Association has encountered Dr. Dickeson before. In August 1982, Dr. Dickeson had yet to complete his first year as president of the University of Northern Colorado (UNC) when his administration notified forty-seven faculty members, including thirty-nine with continuous tenure, of the termination of their appointments at the end of the academic year. The administration asserted that its actions were necessitated by "program exigency" rather than "financial exigency," yet it referred exclusively to financial grounds while declining to demonstrate that financial difficulties could not be alleviated by means less drastic than abrogating tenure. An AAUP investigation resulted in imposition of censure by the 1982 annual meeting. . . .
>
> Dr. Dickeson left the UNC presidency in 1991 (the AAUP censure was removed a year later) and, over the ensuing two decades, has had an active career as a higher education consultant and author, specializing in keeping costs down, protecting governing boards, reducing the faculty payroll, and exposing the supposed downsides of faculty tenure. He has been a cofounder and senior vice president of the Lumina Foundation, his *Prioritizing* book is currently in its second edition, and he prepared a "Frequently Asked Questions about College Costs" paper for former secretary of education Margaret Spellings's Commission on the Future of Higher Education. He also advised the commission that "faculty salaries are especially expensive," that "the time-honored practice of tenure is costly," and that tenure has "evolved" from a mechanism to protect academic freedom into a "system to protect job security." "To understand the management of a college" he wrote, "one must understand the unique culture and extraordinary power of the faculty. . . . To many faculty, they are the university." They assume that they "own all curricular decisions." If too many are tenured, Dr. Dickeson argued, the university loses "institutional flexibility."

for dismissal or termination" and be "subject to annual performance reviews" that "may result in discipline and/or termination." Faculty members not awarded tenure prior to July 2020 would now receive three-year renewable term appointments.

With respect to discipline and termination, the revised handbook stated that "a faculty member has the right to contest" efforts to impose discipline or termination and that "[d]ismissal shall not be used to restrain a faculty member's academic freedom." The new employment agreement, however, provided the administration with broad latitude for dismissal, stating that appointments may be terminated "prior to the expiration of the Appointment Period, 'for cause,' immediately upon giving written notice of such action to the Employee." Grounds for "cause" include "failure to perform the Employee's duties, including failure to comply with any lawful and reasonable directive from Medaille, after being provided with notice of such failure or defect and [after] the Employee fails to cure such failure or defect to Medaille's satisfaction with[in] thirty (30) days of such notice."

The agreement also included a provision whereby a faculty member must acknowledge and agree "that the Prior Handbook was validly replaced and rescinded . . . and that the Employee shall not claim any right, benefit, obligation, or entitlement to any provision contained in the Prior Handbook." The agreement also released Medaille "IRREVOCABLY AND UNCONDITIONALLY from any and all claims, demands, suits, causes of action, obligations, promises, damages, fees, covenants, agreements, attorneys' fees, costs, expenses, debts, contracts and torts of every kind whatsoever" that the faculty member "ever had, now has, or . . . may have."

On July 17, the Faculty Council informed the board of the faculty's conclusion that both the draft handbook and the employment agreement were "completely unacceptable," pledging not to sign the agreement. "The faculty handbook, it is important to stress, did not cause the current financial crisis at Medaille College," the council declared. "Tenure, long-term contracts, office hours, etc., are not the reason for the financial crisis that existed prior to the current pandemic." Notwithstanding the faculty's objections, the board approved both documents at the end of July. The Faculty Assembly responded with unanimous passage of a resolution condemning the board's action.

In June 2020, the full-time faculty received letters informing them that if they declined to sign the employment agreement, the administration would regard them as "at-will employees" whose services can be terminated "for any reason." According to faculty sources, except for three new appointees who signed the agreement in August 2020 unaware of what had transpired, no faculty members have signed the agreement.

The investigating committee received no documents with which to evaluate the administration's claims regarding Medaille's financial condition. In a written response to the investigating committee, the administration merely assured us that the budget crisis was "significant and perilous" and had been adequately communicated to the faculty. Faculty members agree that the college's financial difficulties are genuine, but they almost uniformly blame the Macur administration both for causing these difficulties and for exaggerating their seriousness. They also contend that less drastic measures could have been employed to address whatever challenges the college faced. As the AAUP's staff wrote to President Macur on April 29, 2020,

> The AAUP recognizes that financial emergencies can occur and that institutions may have to make hard choices to avoid compromising their academic integrity—or going out of existence. The Association, however, is concerned that such an emergency might serve as a pretext for terminating faculty appointments based on considerations that violate principles of academic freedom and tenure.

The Medaille administration did not declare financial exigency. While President Macur contended that the COVID-19 pandemic necessitated program eliminations and appointment terminations, the administration's failure to provide financial data in support of that contention—as well as the college's receipt of significant federal pandemic funding—suggests that this claim was largely pretextual. Of more significance to this report, the administration observed none of the Association's relevant procedural standards, as set forth in the *Recommended Institutional Regulations*. The investigating committee, moreover, has seen no evidence that faculty representatives participated meaningfully in decisions regarding program elimination and terminations of faculty appointments.

The Medaille administration's written response to the investigating committee declares: "Medaille College is deeply committed to the principles of shared faculty governance. . . . Faculty are included in the budget process and were integral in last year's program and position assessment and elimination," including in "numerous meetings and town halls that involved hours of transparent discussion and debate."

Testimony of faculty members, including those involved in the discussions referenced by the administration, contradicts these claims. The unilateral decision of the administration and board of trustees first to suspend and then to replace the faculty handbook and employment agreement suggests that whatever governance arrangements were in operation at Medaille before April 2020 have largely ceased to function. The absence of meaningful faculty participation in "program prioritization" and in the suspension and replacement of the handbook violates both the letter and spirit of the *Statement on Government of Colleges and Universities*. The sweeping release claims contained in the new employment agreement would themselves justify a conclusion that the actions of the Medaille administration and board were not only taken in violation of long-standing principles of academic governance but were viewed by the Medaille administration itself as potentially exposing the institution to legal action.

Faculty members at Medaille expressed concerns that even before the spring 2020 crisis, shared governance policies at the school were largely a matter of appearance. "On paper the faculty has a lot of say," one faculty member stated, "but in reality it has no voice." With respect to consultation, another faculty member told us, "The decision is made before the discussion even starts." According to faculty leaders, the faculty has had little to no input into important academic decisions. The investigating committee therefore joins the Medaille faculty in rejecting the administration's claim that it is "deeply committed to principles of shared faculty governance."

Although this investigation has focused on violations of standards of shared governance, we cannot help observing that the actions of the Medaille board and administration have had deleterious effects on the climate for academic freedom at the college. In particular, we note the alarming decision to abandon the tenure system—academic freedom's most critical line of defense—based on the unsubstantiated claim that an alleged financial crisis made such an action necessary.

* * * * * *

The investigating committee finds that the administration and governing board of Medaille College violated the principles and standards set out in the *Statement on Government of Colleges and Universities* by suspending the faculty handbook and imposing a new one, discontinuing programs, and eliminating faculty positions without meaningfully involving the faculty. The investigating committee also finds that the Medaille administration and governing board violated the provisions of the 1940 *Statement of Principles on Academic Freedom and Tenure* by effectively abolishing tenure at the institution.

F. National University (California)

Founded in 1971, National University is a private institution headquartered in La Jolla, California, with twenty-eight campuses situated throughout California and one satellite campus located in Nevada.[31] Approximately one hundred of its academic programs are available online. With some sixteen thousand primarily adult students enrolled, its full-time faculty numbers around 250 and its part-time faculty around two thousand. Unlike the other seven institutions the committee investigated, the university has never had a tenure system. The chair of the board of trustees is Dr. E. Lee Rice, a corporate executive; the chancellor is Dr. Michael Cunningham, formerly dean of the college of business administration at San Diego State University and founder, chair, CEO, and president of a multinational graphics communications company. The institution's president since 2016 is Dr. David Andrews, formerly dean of the school of education at Johns Hopkins University.

The following account is based on faculty interviews, voluminous documentation, and the president's letters to the faculty.[32]

31. National University is also the flagship institution of the seven-institution National University system.

32. President Andrews originally accepted the committee's invitation for an interview, though he appeared to misunderstand its purpose, writing, "I would be happy to have a conversation about our efforts to include a broader and more inclusive range of faculty members in our shared governance model." A committee member explained in response that while such a conversation would be enjoyable, "the investigating committee's charge is quite different: it is to conduct an objective inquiry at each institution under investigation about apparent departures from widely held norms of academic governance in order to arrive at the fullest possible understanding of the case and to subsequently report our findings to the relevant standing committee of the AAUP. It was with that charge in mind that I requested your time for an interview." President Andrews replied, "I am happy to discuss. To be candid, I will share what we have already shared in writing with faculty, our board, and accreditors. I am not likely to engage in a point-by-point defense of 'charges.' Other representative members of our faculty might provide more meaningful information and points of view." The requested interview with the president did not take place.

With the COVID-19 pandemic underway, President Andrews held an April 8, 2020, remote "town-hall" meeting where he expressed confidence, according to the meeting's talking points, that "diligent, nimble, and accommodating actions" could prepare the university for the "new normal" after the pandemic. Some recent decisions had been "considered prior to the COVID-19 outbreak but were accelerated by the crisis"; others were "on the verge of being announced and unfortunately coincided with the crisis." Nevertheless, "the need to take quick and decisive action has never been more obvious in the university. Our traditional timeframe for faculty consultation and shared governance was truncated on a number of these issues. Recognizing the need for more nimble decision-making, the NU and NUS Boards authorized Chancellor Cunningham to take more definitive action and to delegate the same authority to affiliate presidents." Among those decisions were the consolidation of the university's affiliate libraries, the closure of six campuses, and the furloughing of 5 percent of its "employees."

Faculty senate officers met with the president and Provost Gangaram Singh, both before and after the April 8 meeting, to request information concerning the accelerating pace of terminations of full-time faculty appointments—which ultimately numbered about fifty—and ongoing program reductions through a process that bypassed procedures set forth in the university's *Faculty Policies*. Senate officers were quick to point out that the administration's actions could not be justified on grounds of financial difficulties, since the institution held more than $650 million in reserve, excluding a 2019 private donation of $350 million and a $4.5 million grant under the CARES Act passed by Congress in March 2020.

In a May 22 letter to the faculty, the president subsequently announced that the administration would abrogate all existing faculty contracts in order to issue new ones effective July 1 and would suspend the university's *Faculty Policies* in preparation for issuing its own handbook:

> The National University Board of Trustees has charged us with making the changes that are necessary to better serve our students at the lowest possible tuition rate while assuring [*sic*] the workforce relevance of our programs. . . . This will require new contracts for all faculty members. . . . The new contractual relationship will include an Interim Faculty Handbook, which will be available on June 15, 2020. The Interim Faculty Handbook will guide operations until a permanent new faculty handbook can be vetted and approved through faculty input and a new shared governance process (completed by December 2020).

A June 15 letter from the president to the faculty repeated that current faculty contracts would conclude on June 30 and that new contracts would "require adherence" to the new interim faculty handbook, to be finalized with the faculty's "input" by December. The president's further "clarification" of the new governance structure came in a letter of July 19, also addressed to the faculty: "The Interim Faculty Handbook outlines the role of a new University Senate and an Academic Affairs Council. To avoid confusion, I want to be clear. The University Senate replaces the previous Faculty Senate, and the Academic Affairs Council replaces the previous Undergraduate and Graduate Councils. . . . Consequently, the previous Faculty Senate, Undergraduate Council, and Graduate Council are no longer recognized university entities."

On June 3, following requests for assistance in late spring from both faculty senate officers and AAUP chapter members, the AAUP's staff wrote to President Andrews and then–board chair Thomas Clevinger canvassing faculty complaints of actions taken by the administration and governing board that seemed to disregard commonly accepted standards of academic governance: making unilateral changes to the academic model of the university without respecting the centrality of the faculty's judgment in relation to general educational policy; merging, in March 2020, all eleven National University system libraries into one central library without meaningful consultation with the faculty; closing several significant academic centers throughout California and in Nevada while neglecting to take faculty recommendations into account; and preempting the faculty's primary responsibility regarding the discontinuation of academic programs by expediting the decision-making process. The president's June 26 response to the staff's letter—which was identical to his response of the same date to Professor Alexander Zukas, president of National's AAUP chapter—disagreed with "the characterization of events contained in correspondence from campus, state, and national [AAUP] affiliates."

After faculty sources informed the Association's staff of the administration's midsummer action to abolish existing institutional procedures, the faculty senate, and curriculum committees and to issue new contracts, the staff wrote the president again on July 30 to inform him that, given the severity of the apparent departures from AAUP-supported procedural standards and their evident implications for academic freedom and shared governance, the staff intended to recommend the case for formal investigation absent an appropriate resolution. President Andrews responded with an October 1 "submission to the investigating committee," noting "the challenges that COVID-19 imposes on traditional on-site classes, on-site operations, and institutional finances" and stating that the pandemic "was not the initial catalyst" for the administration's actions to rescind the faculty handbook and abrogate faculty contracts. Rather, these "changes" were allegedly the result of a "long-running strategic-planning process" led by a committee involving "administrators, faculty, staff, and other stakeholders."

Under normative standards of academic governance, decisions regarding reappointments and nonreappointments, dismissal, and other matters of faculty status are primarily a faculty responsibility. "Determinations in these matters," the *Statement on Government* declares, "should first be by faculty action through established procedures, reviewed by the chief academic officers with the concurrence of the board." It continues: "The governing board and president should, on questions of faculty status, as in other matters where the faculty has primary responsibility, concur with the faculty judgment except in rare instances and for compelling reasons which should be stated in detail."

In contravention of this basic principle of academic governance, the administration and governing board of National University deprived its faculty of any opportunity to make determinations regarding which positions would be eliminated. Instead, the administration simply rescinded faculty contracts and issued new ones to those faculty members it chose to retain. President Andrews's letter accompanying the contracts, dated June 15, stated, "Today, we are notifying members of [the] National University faculty that current contracts will conclude on June 30, 2020. . . . New contracts will take effect on July 1, 2020. The contracts require adherence to a new Interim Faculty Handbook that as of today will guide operations, while we work together through a dynamic process—with your input—to create a permanent new faculty handbook by December 2020." The roughly fifty faculty members the administration did not choose to retain were issued lengthy releases—which included nondisparagement clauses—to sign instead.

Just as contracts are useless in protecting faculty appointments if they can be simply abrogated by the administration, so too are policies regarding institutional governance if they can be unilaterally changed or replaced by the administration. According to the *Statement on Government*, the relationship among the board, administration, and faculty calls for "full opportunity for appropriate joint planning and effort." Regarding joint effort more specifically, "(1) important areas of action involve at one time or another the initiating capacity and decision-making participation of all the institutional components and (2) differences in the weight of each voice, from one point to the next, should be determined by reference to the responsibility of each component for the particular matter at hand."

It is clear from President Andrews's letter accompanying the new faculty contracts, as well as from other documents referenced above, that there was neither joint planning nor joint effort in establishing the sixteen-page interim handbook that replaced the *Faculty Policies*, nor was there "decision-making participation" by the faculty. That much is also evident from the interim handbook itself, which cheerfully begins, "Welcome to the New NU!" and proceeds to give the board the sole right "to review, revise, remove, and interpret the policies and procedures set forth in this Interim Faculty Handbook and to update them as appropriate to comply with legal and regulatory obligations." By contrast, the previous *Faculty Policies* included a negotiated agreement that stated, in part:

> National University is committed to shared governance and believes it to be a fundamental ingredient of a healthy academic institution and an essential right and responsibility of a scholarly community. National University agrees generally with the philosophy in the 1966 *Statement on Government of Colleges and Universities*, which indicates that shared governance allows National University to benefit from the accumulated wisdom and knowledge of its Faculty and provides a structure that includes the elected Faculty governance bodies (the Faculty Senate, Graduate and Undergraduate Councils) through which Faculty and administrators work together to promote National University's mission.

The *Faculty Policies* had also stipulated that the "President and Board of Trustees must approve all amendments to the Faculty Policies and Faculty Bylaws after those amendments have been approved by a majority vote of the Faculty Senate and the Faculty."

Finally, the *Statement on Government* calls for the "structure and procedures for faculty participation [in institutional governance to] be designed, approved, and established by joint action of the components of the institution." It goes on to assert that "[f]aculty representatives should be selected by the faculty according to procedures determined by the faculty."

Neither the University Senate nor the Academic Affairs Council, codified in the interim handbook and replacing the Faculty Senate and the Undergraduate and Graduate Councils, respectively, was designed, approved, or established by joint action of the faculty and administration. Rather, the evidence makes clear that, like the abrogation of faculty contracts and the elimination of the *Faculty Policies*, the board and administration created both bodies unilaterally.

Regarding faculty representation on governance bodies, the three officers of the faculty senate had been elected by the faculty, as had the members of the Undergraduate and Graduate Councils. By contrast, according to the interim handbook, the University Senate—which "provides the voice of the collective Faculty, Administration, and Staff"—is composed of five senior administrators and five faculty members. The latter include the three immediate past faculty senate officers and the immediate past chairs of the Undergraduate and Graduate Councils. While all five faculty members were elected by the faculty to their previous positions, they were *not* elected to their current positions; they were, rather, appointed to their current positions by the administration based on their past positions. At no point did the full faculty have an opportunity to elect its own representatives to the University Senate. For its part, the Academic Affairs Council—which, oddly, also "provides the voice of the collective Faculty, Administration, and Staff"—includes seven administrators and seven faculty members and is chaired by the vice provost of academic and faculty affairs. While three of the seven faculty members are at-large, the other four were appointed by the administration based on positions to which they had been elected under the old governance structure. In short, the full faculty has the opportunity to elect directly only three representatives to the institution's two major governing bodies.

Regardless of the reasons for the board and administration's flagrant contravention of norms and standards of academic governance at National University—reasons that do *not* include significant financial difficulty by any account—their unilateral changes to the institution's academic model, its faculty policies, and its governance structure demonstrate a complete lack of respect for, or even understanding of, the centrality of the faculty's judgment in matters of educational policy and faculty status. As one faculty member put it, "I've never seen anything as reprehensible as this." The conclusion is inescapable: the board and administration's actions have demoralized a dedicated faculty, decimated a reasonably sound institutional governance structure (despite the absence of a tenure system), and imperiled the university's mission "[t]o deliver an exceptional student experience by providing superior programs and services that are relevant and result in meaningful learning."

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As the foregoing has shown, this case features a trinity of egregious violations of widely accepted governance standards: the governing board and administration's abrogation of faculty contracts, suspension of the institution's *Faculty Policies*, and unilateral replacement of an elected faculty senate with a university senate. As a result of these actions, there can be no doubt that traditional academic governance at the university has been plunged into an abysmal condition. This investigating committee therefore finds that the governing board and administration of National University have thoroughly and brazenly violated AAUP-supported principles and practices of academic governance, as set forth in the *Statement on Government of Colleges and Universities* and derivative AAUP policy documents.

G. University of Akron

In contrast to the other institutions investigated in this report, the University of Akron is a public research university, part of Ohio's university system since 1967. It enrolls about seventeen thousand students at its main campus. The full-time faculty, most members of which are represented by the local AAUP chapter (Akron-AAUP) in collective bargaining, numbered around 630 prior to the reductions in force; the part-time faculty numbered about 640. The institution's president, Dr. Gary Miller, assumed office in October 2019, having served most recently as chancellor of the University of Wisconsin–Green Bay. The chair of the board of trustees is Mr. Joseph M. Gingo, a retired corporate executive.

Professor Pamela Schulze, Akron-AAUP president, first sought the AAUP staff's advice in April 2020 when the chapter, based on its communications with the administration, began to fear that the university's long-standing enrollment and financial problems, now exacerbated by the pandemic, might lead the governing board to declare financial exigency under article 15, section 1.A.1, of the collective bargaining agreement (CBA). The chapter was even more alarmed by the prospect that the administration would invoke "force majeure" under article 15, section 12, and thus nullify the rest of the article with its procedural protections for reduction in force. In a May 1 advisory letter to the chapter, the staff elucidated the provisions of Regulation 4c of the *Recommended Institutional Regulations* without directly referring to article 15, which in several crucial respects falls short of these provisions, and outlined the Association's position on force majeure, as set out in its 2007 Katrina report. In summarizing that position, the staff wrote,

> In short, "force majeure" and "financial exigency" refer to situations so catastrophic that they necessitate emergency measures. In American higher education, a declaration of financial exigency typically introduces a process of orderly decision-making that involves the faculty. An invocation of force majeure does not. . . . [T]he purpose of Regulation 4c is to set forth procedural standards for just such a crisis, standards that safeguard academic freedom and tenure and that ensure meaningful faculty participation. Obviously, invoking force majeure instead of financial exigency in order to circumvent these procedural standards would be inimical to principles of academic freedom and faculty governance.

In early May the UA administration initiated and completed a reorganization of the university, reducing the number of colleges from eleven to five, in a process that the chapter said excluded any meaningful "consultation or advice from the faculty," although throughout this entire period the administration did hold meetings with the faculty senate and with the chapter as part of ongoing contract negotiations. In late May the administration and governing board invoked the force-majeure clause in article 15 and began constructing a list of faculty positions to eliminate. On July 15, the board of trustees announced its decision, effective August 22, to terminate the appointments of nearly one hundred bargaining-unit faculty members (BUF), most of whom were tenured. On August 5, members of the collective bargaining unit voted to reject the proposed contract, and, on August 21, Akron-AAUP filed a grievance with an arbitrator contesting the university's invocation of force majeure. On September 18, the arbitrator issued his decision that "the University demonstrated that present circumstances justify the use of the force majeure clause as outlined in Article 15, Section 12."

On October 7, the AAUP's staff wrote to President Miller to convey the Association's concerns, based on information provided by the chapter, about apparent departures from AAUP-recommended standards of academic governance and of academic freedom, tenure, and due process manifested both in the decision to terminate faculty appointments and in the process that led up to that decision. The staff's letter summarized these reported departures, in relation to Regulation 4c of the *Recommended Institutional Regulations*, as follows:

- no "elected faculty governance body" or "body designated by a collective bargaining agreement" participated meaningfully in decisions regarding financial exigency, much less force majeure, and in the determination that "all feasible alternatives to termination of appointments have been pursued";
- neither the faculty as a whole nor any representative faculty body was afforded "primary responsibility" for "determining where within the overall academic program termination of appointments" would occur and "the criteria for identifying the individuals whose appointments are to be terminated";
- "the faculty or an appropriate faculty body" did not "have the opportunity to render an assessment in writing of the institution's financial condition";
- those faculty members whose programs were being considered for discontinuance were not "provided at least thirty days in which to respond to [a closure recommendation]";
- none of the affected faculty members were afforded any due-process protections, much less those required under Regulation 4c;[33]

33. By letter of April 19, the UA administration and Akron-AAUP submitted a joint response to the AAUP's invitation for comment and corrections on the draft text. With regard to this quoted sentence, the

- the administration did not take into account either tenure or length of service in selecting faculty members for reduction in force;
- the administration declined to make any effort to find other suitable positions within the university for affected faculty members;
- affected faculty members received no severance salary.

Employing virtually the same language as used in the May 1 advisory letter, the staff's letter also set out the AAUP's position on force majeure. In closing, the letter acknowledged that the staff's information about the case had come primarily from the chapter and that the administration might have additional information that potentially would alleviate the Association's concerns, inviting President Miller to respond. Absent such information, the letter continued, the available facts seemed to indicate that the board and administration had acted in disregard of AAUP-supported principles and standards. The staff accordingly urged that the notices of termination be rescinded and that any future course of action be taken in accordance with normative academic standards. Noting that the Association's executive director had recently authorized an investigation of seven colleges and universities where violations of AAUP-supported governance standards appeared to have occurred in the wake of the COVID-19 pandemic, the staff informed President Miller that if an appropriate resolution appeared unlikely, the staff would recommend adding the University of Akron to the investigated institutions.

After hearing nothing directly from the administration in the intervening two weeks, the staff did so recommend, and the executive director authorized Akron's inclusion in this investigation. On October 22, the staff wrote President Miller to inform him of that development and to elicit the administration's cooperation with the investigating committee. On October 30, the staff received a twelve-page letter from the university's outside counsel—Mr. George S. Crisci at the firm of Zashin and Rich—which provided what the letter describes as a "substantive response to the numerous concerns and allegations . . . levied against the University by your organization." With respect to "shared governance in the university's pandemic response," it states that the process that led to the layoffs, while "not a formal part of shared governance, . . . involved the Akron-AAUP, the legal representative of [the] full-time faculty for collective bargaining purposes"; that the administration engaged "in ongoing, regular communication with the faculty," going "above and beyond to involve the faculty" and the chapter in responding to the "dire economic situation caused by the spread of COVID-19"; and that the board of trustees' July 15, 2020, decision "to eliminate . . . 97 faculty positions" was "not taken lightly, nor was it 'out of the blue.'" "Contrary to the information provided to you by the Akron-AAUP," the letter summarized, "both the Faculty Senate and the Akron-AAUP were involved extensively in the discussion of the University's financial situation." With respect to the staff's application, in its October 7 letter, of the *Statement on Government* and the 1940 *Statement* to the UA layoffs, Mr. Crisci states that "these documents have no controlling effect or authority over the relationship between the University and its faculty." Furthermore, even though "the AAUP advocates for an extension of shared governance to all matters of "faculty status," that is not what the faculty of the University negotiated in their CBA," which grants to the governing board "exclusive prerogative" for decision-making related to "resources and structure." The decision to invoke force majeure—"a provision in its collective bargaining agreement with the Akron-AAUP that the parties had negotiated in its very first labor agreement and included in every subsequent labor agreement with no attempt made to negotiate its removal or alter its terms"—was such a decision. Unfortunately, the letter forecloses any further "dialogue with AAUP" "until the negotiations for a new CBA with Akron-AAUP have concluded." The letter also threatens legal action against the national AAUP on several potential bases, including an AAUP decision to sanction the institution.

The investigating committee wrote to Mr. Crisci on December 3, noting that the October 30 letter gave us little reason to expect a reply, but taking issue with the letter's statement that "the University is highly skeptical that any information it provides, no matter how overwhelming, will change the AAUP's determination to censure [*sic*] the University based on the recent RIF [reduction in force] of tenured positions." The committee assured Mr. Crisci that it had not prejudged the issues at the University of Akron and that it has no formal ties or obligations to the bargaining unit; indeed,

letter comments: "To make this statement accurate, the phrase 'before their positions were eliminated' should be inserted immediately after 'due process protections.' Most of the affected faculty members were afforded post-termination hearings and statements of reasons pursuant to Grievance 2020–03 brought by the Chapter."

we noted, the Association has conducted investigations of institutions with AAUP collective bargaining units in the past, and they have not necessarily led to sanction or censure. Mr. Crisci never replied.

On December 3, the committee wrote to Professor Schulze, who agreed to an interview by teleconference the following day. In the course of that interview, Professor Schulze acknowledged that the bargaining unit cannot challenge the arbitrator's decision that the university's declaration of force majeure was justified and admitted that, had the arbitrator ruled in the union's favor and the administration challenged the ruling, the chapter would have considered such a challenge "ridiculous." However, Professor Schulze also called attention to administrative decisions that appeared inscrutable, pointing to cuts to the School of Dance, Theatre, and Arts Administration that left the theater department with no theater faculty members or staff and to a statement by a university spokesperson that the dance and arts administration programs would be "revitalized with new direction and leadership." The committee is at a loss to understand how decisions of this granularity and specificity, involving determinations of the content of programs in the performing arts, can legitimately be made without faculty involvement. Be that as it may, the investigating committee cannot contest the fact that the administration of the University of Akron followed the collective bargaining agreement, any more than we can contest the legality of a decision reached under binding arbitration.

As our earlier quotation from the Katrina report makes clear, however, we can contest the inclusion of "force majeure," "act of God," "extraordinary circumstances," and similar escape-clause provisions in faculty handbooks and collective bargaining agreements as well as the invocation of such provisions. They prevent the application of AAUP-supported principles and standards by permitting a governing board and administration facing a real or ostensible financial emergency to nullify existing policies designed to involve the faculty in decision-making and to protect academic freedom, tenure, and due process during a layoff. The AAUP staff's October 6 letter to President Miller (quoted above) enumerates allegations made by Akron-AAUP of violations of AAUP-recommended standards of academic governance, academic freedom and tenure, and academic due process that resulted from the administration's invocation of force majeure. As the administration declined to provide the investigating committee with any evidence to rebut those charges, the committee is compelled to confirm the staff's tentative conclusion: "The action taken to terminate the services of ninety-six full-time faculty members at the University of Akron disregarded almost all the principles and standards set forth in Regulation 4c of the *Recommended Institutional Regulations*."[34]

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The investigating committee finds that the University of Akron administration, in invoking force majeure and terminating the appointments of scores of full-time faculty members, many of them with indefinite tenure, disregarded AAUP-recommended standards designed to ensure meaningful faculty participation in academic decision-making and to safeguard academic freedom and tenure under financially exigent circumstances. In doing so, it acted in contravention of the *Statement on Government of Colleges and Universities* as well as the 1940 *Statement of Principles on Academic Freedom and Tenure* and derivative AAUP policy documents.[35]

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34. On March 1, 2021, the university's board of trustees voted unanimously to ratify a new collective bargaining agreement between the University of Akron and UA-AAUP that will be in force for the next six years (the chapter had voted its approval on February 26). The new agreement does not provide for the reinstatement of the faculty members whose appointments were terminated. The previous CBA (in article 15, which covers retrenchment) stated that "catastrophic circumstances, such as force majeure, could develop which are beyond the control of the University and would render impossible or unfeasible the implementation of procedures set forth in this Article" (section 12). The new CBA removes the phrase "such as force majeure" but leaves intact the rest of section 12, thereby nullifying the rest of the article in the event of "unforeseen, uncontrolled and catastrophic circumstances." It remains unclear why any version of section 12 is necessary at all, since section 1.A.1 of article 15 provides for retrenchments in the case of "financial exigency, defined as financial problems so severe that they threaten the University's ability to maintain its operations at an acceptable level of quality."

35. The April 19 letter articulating the joint response of the UA administration and Akron-AAUP to the draft text of this report describes what it calls "significant developments"—pertaining to "financial transparency; the process for academic reorganization; the processes for academic program review, resource allocation, and program elimination; and the promulgation of faculty workload polices"—that they say "bear on the contents" of the draft report. These developments, it adds, are set forth in a Memorandum of Understanding (MOU) "on shared governance," upon which the administration and Akron-AAUP agreed on April 7, that addresses "some of the issues that were identified in the AAUP staff's October 7, 2021, letter" to President Miller. The letter summarizes the provisions of the MOU as follows:

Financial Transparency
Representatives of the University and the Chapter will meet quarterly to discuss the University's finances and budget modeling. The University's representatives will provide the Chapter's representatives with the same information about the University's financial condition that is provided to the University's Board of Trustees, along with supporting data reasonably requested by the Chapter's representatives. . . .

Investment in Academic Programs
A regular and transparent process is to be established whereby faculty proposals (as well as those from the Administration) for investment in existing or new academic programs will be considered and evaluated by a standing committee of the University's Faculty Senate, with assistance from the University's Office of Academic Affairs. The committee will make recommendations about these proposals to the Faculty Senate, which in turn will make recommendations to the President of the University for consideration in the annual budgeting process.

Program Review Process
Regular academic program reviews will be conducted by a standing committee of the Faculty Senate, which will make recommendations to the Senate. The Senate will, in turn, make recommendations to the President of the University.

As part of the academic program review process, the faculty and administrators associated with each program will be provided with clear feedback on its status for the purpose of providing guidance and support and promoting continuous improvement. Programs will be rated as either satisfactory (thus no review required for five years), requiring interim review, or underperforming. Programs that are underperforming or that are adversely affected by changes in accreditation or licensure standards will be given detailed guidance about how they can improve or meet the challenges posed by the changes in those standards and, if appropriate, will be provided with support by the Administration. These programs will be reviewed on an accelerated schedule.

Programs will not be terminated except as a result of this review process, which ordinarily would not occur until the fifth year after a regular review identifies deficiencies that could, if not corrected, warrant elimination of the program. In rare and compelling circumstances, a program may be terminated more rapidly if enrollment trends or financial data indicate that program recovery is not feasible, or if efforts to correct programmatic issues either failed or were not initiated within a reasonable period of time; but, in no event, will a program be terminated less than two years after a review identifying deficiencies that, if not remedied, could result in program termination.

Process for Reorganizing Academic Units
The MOU prescribes in detail the process by which the faculty are to be consulted and make recommendations concerning the reorganization or renaming of academic units. This process includes votes on the part of the faculty of the affected units, an evaluation of the proposal by a standing committee of the Faculty Senate, which then makes a recommendation to the Faculty Senate. . . .

Faculty Workload Policies
In accordance with the University's existing rule on faculty workloads, deans will establish and clearly communicate to the faculty of each of their respective college's departments or schools the proportions of teaching, research, and service expected of the unit as a whole. If those proportions are changed, the unit will be given a reasonable time to implement the change. Each unit will develop a policy for determining the workload of its individual faculty members, which will be submitted to the dean of the college for approval. . . .

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We believe this MOU represents a good-faith effort to set the University on the right course to make the progress that is needed in order for the University to meet its current challenges, which we believe can only be achieved through meaningful shared governance. We believe that the collaborative approach we have taken to addressing the above issues lays the groundwork for further improvements in shared governance on our campus. As the original reasons for the AAUP's investigation of the University that are addressed in the MOU no longer exist, we request that the draft Special Report: COVID-19 and Academic Governance by the AAUP's Committee on College and University Governance be updated to reflect these developments and that the Council take these developments into account when it meets to discuss the report. The University further requests that the Council take no action adverse to the University; the Chapter does not oppose this request.

H. Wittenberg University (Ohio)

In August 2019, President Michael Frandsen of Wittenberg University, a liberal arts institution in Ohio enrolling about 1,600 students and affiliated with the Evangelical Lutheran Church in America, informed the faculty of the administration's plan to eliminate twenty faculty lines (of approximately 115 full-time positions) through a combination of retirement, nonrenewal of nontenured faculty appointments, and program discontinuance. Later in the fall 2019 semester, the administration presented a list of programs to the university's Committee on Educational Policies (EPC), the pertinent faculty governance body, to be considered for discontinuance, some of which the committee approved. At its early February 2020 meeting, the university's governing board subsequently voted to establish an Academic Program Futures Committee (APFC) to plan further academic program reductions. Unbeknownst to the faculty, this would be the first of three drastic steps taken by the board.

The second came in May 2020, two months into the COVID-19 crisis. "Wittenberg is at a point in its history where its very survival is threatened," began a May 14 letter to the faculty from the then chair of the governing board, the Reverend Jonathan Eilert. Because "the pandemic brings uncertainty and a heightened sense of urgency," the letter continued, the board is "compelled . . . to act now" in order to "adjust . . . usual processes" that obstruct "creative approaches" needed to "overcome" and "survive" the crisis. Consequently, the board had approved a May 8 resolution "suspending any faculty manual provisions that might delay the actions needed to achieve financial sustainability."

Finally, by letter of June 22, the board announced to the faculty its unanimous approval of APFC recommendations to discontinue eight programs and eliminate two tenured faculty positions, in geology and Japanese.

The faculty protested at each step along the way. In response to the sudden creation of the APFC in February, the faculty and the Faculty Executive Board (FEB) passed a resolution protesting the way in which the committee's formation "circumvent[ed] established governance procedures" by granting "the Board authority which would otherwise require a declaration of financial exigency" and violated "longstanding" faculty bylaws concerning the appointment of faculty representatives to institutional committees. On June 9, the Wittenberg AAUP chapter issued an open letter to the university community to express its "deep concern" regarding "decisions about the University being made outside of and inconsistent with the long history of shared governance at Wittenberg University." The letter closed by urging the board and the administration "to restore responsibility for the curriculum to the faculty." And one week after the board's announcement that it had unanimously accepted the ad hoc APFC's recommendations, a majority of EPC faculty members roundly condemned the work of the APFC in a memorandum to the faculty, administration, and board. The memorandum criticized the "deeply corrosive process" and "denounce[d] in no uncertain terms" the administration and board's "abandonment of shared governance and removing the faculty from primary responsibility for the curriculum." The faculty's opposition was to no avail.

Professor Michael Zaleha, chair of the Department of Geology, contacted the national AAUP staff on July 2 regarding the termination of his tenured faculty appointment, effective at the end of the 2020–21 academic year, and the elimination of his department, in which he had taught for nineteen years. Shortly thereafter, Professor Terumi Imai-Brandle, a tenured associate professor in the Department of World Languages and Cultures, requested the AAUP's assistance after having been notified that courses in Japanese would no longer be offered and that her seventeen-year appointment would consequently terminate at the end of 2020–21 academic year on grounds of program discontinuance.

Writing to the administration and board on July 10 and July 31, the national staff stated the AAUP's concerns about apparent departures from Association-recommended principles and procedural standards on academic governance, financial exigency, tenure, and academic due process and urged the rescission of the termination notices issued to Professors Zaleha and Imai-Brandle. President Frandsen and newly elected board chair William D. Edwards began their August 12 response by declining "to debate the points outlined in [the staff's] letter[s]," stating only that they "disagree with the assertions" the AAUP is "claiming." They closed by stating that the governing board and administration respected the AAUP's right to make recommendations and the right of Wittenberg professors to become members of the Association. "However," they wrote, "neither of those things will, in the end, determine our governance and management of Wittenberg University."

The appointments of Professors Zaleha and Imai-Brandle were not terminated as a result of financial exigency. Indeed, neither the board nor the administration formally declared a state of financial exigency. At the same time, the evidence is clear that the decision to eliminate programs and faculty positions was based on financial considerations. For example, Rev. Eilert and President Frandsen's joint June 22, 2020, letter to the Wittenberg faculty and staff explained that the board had charged the APFC with "finding $2.5 million in academic program savings." The letter continued, "Those savings approved by the Board include discontinuing the following academic programs," which were listed. The link between the university's financial difficulties and the elimination of academic programs and faculty positions is just as clear in the termination letters Professor Zaleha and Imai-Brandle received, both of which begin as follows: "As you are aware, Wittenberg University is experiencing one of the toughest financial situations we have faced in recent history. On June 18, 2020, *as part of the response to our challenges*, the University's Board of Directors voted to discontinue [your] program. As a result of that vote on the discontinuation of your program, you are hereby provided notice that your appointment, and your employment with the University, is terminated effective August 31, 2021" (emphasis added).

Like many other institutions, Wittenberg faced financial struggles that were exacerbated by the pandemic, but they never rose to the level of exigency. In fact, President Frandsen's June 22, 2020, memorandum to the faculty and staff expressed optimism about the university's financial outlook: "Even in this difficult time, there are positive signs for recruitment, retention, and resources. We have 433 deposits from first-year and transfer students. . . . First-to-second year retention is on track to be in the high 70%s, the best it has been in many years. Fundraising has been successful this year with over $7 million in new gifts and our comprehensive campaign is closing in on $70 million. We have seen our endowment recover from its March low to almost what it was when the pandemic hit." This hardly sounds like an institution in severe financial distress.

Regulation 4d addresses program discontinuance based on educational considerations. Like Regulation 4c, it does not apply here, at least in the case of Professor Imai-Brandle. Japanese is one of six "areas of study" in the world languages and cultures department, and courses in Japanese are also offered as part of the East Asian languages program. However, Japanese is not a stand-alone program or department. The university does not offer either a major or a minor in Japanese, as it does for each of the other five areas of study in the department. Therefore, since no such program existed, the university did not discontinue a *program* in Japanese. It instead eliminated a tenured faculty member's position, which had the result of discontinuing *courses* in Japanese. The reason has become familiar: comparatively low-enrolled courses are not efficient from an administrative point of view. In the words of several faculty members interviewed by the investigating committee, her less-than-robust enrollments made Professor Imai-Brandle—despite her tenured status and seventeen years of service to the university—"low-hanging fruit." By eliminating her position as a crude cost-saving measure the administration and board subverted tenure and violated Regulation 4 of the *Recommended Institutional Regulations*.

Regulation 4d does apply in the case of Professor Zaleha, though the administration's actions were inconsistent with most of its provisions. During the period under investigation, geology had two full-time faculty members in addition to Professor Zaleha, one of whom initiated the environmental science program in 2012 and directed it for many years, and both of whom taught courses for the program and for geology. Professor Zaleha, by contrast, taught courses only for geology, making him, according to interviewees, "the odd man out." When the decision was made to eliminate geology, it was also a decision, in effect, to eliminate Professor Zaleha's position; his two department colleagues were "safe" because they also taught in environmental science, which had more majors and higher course enrollments than geology.

Regulation 4d states that the decision to discontinue a program or department must be based on educational considerations, "as determined primarily by the faculty as a whole or an appropriate committee thereof"; in addition, "the administration will make every effort to place the faculty member concerned in another suitable position" before it issues notice of its intention to terminate an appointment. These same provisions are found in Wittenberg's faculty manual, yet they were not followed in the case of geology and Professor Zaleha.

According to the faculty manual, the EPC is charged with evaluating proposals to discontinue programs, and "a recommendation [from the EPC] for program discontinuance must be voted on by the faculty." In early October 2019, Provost Michelle Mattson proposed to the EPC the discontinuance of several departments and programs, including geology; the geology department subsequently submitted its response to the committee. In December 2019, the EPC voted to reject the provost's proposal regarding geology and to retain the department, the major, the minor, and Professor Zaleha's position. What occurred to that point was consistent with Wittenberg's regulations.

In February 2020, the board of directors, having apparently determined that the EPC's decisions would not result in the cost savings it was seeking, formally established the APFC. According to the board's resolution, the ad hoc committee's "goal" was "recommending solutions to the Board of Directors to achieve reductions of $2.5 Million per year from the academic program expenses of Wittenberg University by the 2021–2022 Fiscal Year starting on July 1, 2021." According to its constitution and bylaws, the governing board may establish special committees "as it deems appropriate in the discharge of its responsibilities." Therefore, the board's creation of the APFC was also consistent with institutional policy. It was, however, entirely inconsistent with the *Statement on Government*, which calls for the "structure and procedures for faculty participation" in institutional governance to "be designed, approved, and established by joint action of the components of the institution."

The *Statement on Government* goes on to assert that "faculty representatives [to agencies of institutional governance] should be selected by the faculty according to procedures determined by the faculty." The APFC consisted of five board members (including the board chair), President Frandsen, and Provost Mattson. The four faculty members on the committee, according to the board resolution, "shall be appointed by the President upon the recommendation of the Provost and in consultation with the Faculty Executive Board." For the sake of "expediency," according to interviewees, the administration indeed selected four faculty members from the membership of elected faculty committees. While it is true that the four faculty members were elected to their positions on those committees, they were *not* elected by the faculty to serve on the APFC.

In addition, the faculty members' service on the APFC was conditioned on their agreeing to confidentiality—a "gag order," as interviewees called it. The AAUP's statement on *Confidentiality and Faculty Representation in Academic Governance* asserts that, "except in personnel matters, imposing a precondition of confidentiality on faculty representatives serving on institutional governance bodies is incompatible with AAUP-supported governance standards." The statement continues: "Whenever the work of a decision-making body entails [collective faculty] consequences, the faculty members on the body should consult periodically with the colleagues whom they represent by keeping them informed of the body's discussions and by soliciting their views regarding the matters under consideration." The collective consequences for the faculty of the APFC's work included nothing less than the restructuring of the academic program and the elimination of two tenured faculty positions, yet the faculty members on the committee were unable to inform their colleagues of the APFC's deliberations. Ultimately, in making its recommendations to the board, the APFC—including its four faculty members—moved from *potentially* to *actually* violating the faculty manual and circumventing the existing faculty governance structure.

While the APFC was carrying out its work largely in secret, Rev. Eilert informed the faculty and staff by letter of May 14 that the board had passed a resolution on May 8 "suspending any Faculty Manual provisions that might delay the actions needed to achieve financial sustainability." Rev. Eilert and President Frandsen's joint June 22 letter to the faculty and staff also stated in nearly identical language that "the Board of Directors took extraordinary action, including suspending any Faculty Manual provisions that might delay the work needed to achieve financial sustainability."

Not a single faculty member interviewed by the investigating committee knew which manual provisions had been suspended or how long the suspension was to last. A member of the investigating committee asked President Frandsen and Provost Mattson which provisions the board had suspended and when the suspension would be lifted. Their joint response of January 18 read: "As of this writing, no provisions of the Faculty Manual have been suspended. The Board resolution permitted the suspension of Faculty Manual provisions, but it did not require it." In the light of this contradictory testimony, the actual status of the faculty manual is not clear to the investigating committee. However, based on the evidence and the events, the committee is inclined to agree with a faculty interviewee's caustic remark that "the faculty manual is in effect—except when the administration or board takes actions that violate it."

Not surprisingly, many interviewees manifested a defeatist attitude about the faculty's role in university governance. The committee heard repeatedly that shared governance was "nonexistent" and that even tenured faculty members—especially those in comparatively low-enrolled programs—feared losing their jobs. One faculty member's comment expressed a widespread sentiment about shared governance: "I just think there isn't any. We're all still doing things, but I don't know why. . . . I don't know why anyone is serving on a committee right now because what you decide doesn't matter. When they can unilaterally change the [faculty] manual, which provides a structure for shared governance, what's shared about that? The only outcome for what we do is something the administration approves."

The ramifications of the board and administration's actions for academic freedom and tenure are equally severe. In response to a question about the effects of the terminations of two tenured colleagues' positions, one faculty interviewee simply said: "Tenure doesn't mean anything here. Academic freedom is gone." Another offered: "We don't have tenure anymore because the university can do whatever it wants. We have the word 'tenure' but it doesn't mean anything. . . . We always have to be looking for job opportunities at other institutions or leave academia altogether."

The latter comment speaks to a passage from the 1940 *Statement of Principles on Academic Freedom and Tenure*: "Freedom and economic security, hence, tenure, are indispensable to the success of an institution in fulfilling its obligations to its students and to society." In their disregard for tenure—and, by extension, academic freedom—Wittenberg's board and administration have demonstrated that they do not see either as "indispensable" to the university. Further, their actions have threatened the university's very ability to fulfill its obligations to its students and society.

* * * * * *

As the foregoing account has shown, the governing board and administration of Wittenberg University initiated a program-review process that circumvented established faculty governance policies and procedures; suspended unspecified sections of the faculty manual that would have interfered with their plans to close programs and eliminate faculty appointments; and discontinued eight programs and terminated two tenured appointments without meaningful faculty involvement and in disregard of widely accepted academic standards—unilateral actions with devastating consequences for academic governance at the institution. This investigating committee accordingly finds that in taking these actions the board of directors and the administration of Wittenberg University contravened fundamental principles and standards of academic governance enunciated in the *Statement on Government of Colleges and Universities*. The committee also finds that these same actions have severely weakened the institution of tenure at the university and along with it the climate for academic freedom.

III. Concluding Observations and Recommendations

Although variations among the eight institutions make generalizations difficult, the investigating committee offers, by way of conclusion, the following general findings, observations, and recommendations.

A. A Crisis in Academic Governance

The COVID-19 pandemic has presented the most serious challenges to academic governance in the last fifty years.[36] The results of a recent AAUP national survey of four-year institutions of higher education indicate that nearly 10 percent of institutions with a tenure system have laid off tenured and tenure-track faculty since the onset of the pandemic and that more than a quarter (27.5 percent) of the institutions surveyed have laid off faculty on part-time or full-time non-tenure-track appointments. In addition, 17 percent of surveyed institutions have eliminated academic programs during the pandemic, and close to one in ten have declared some or all institutional regulations no longer in force.[37]

Clearly, then, the colleges and universities included in this investigation are by no means the only institutions that witnessed dramatic board and administrative action regarding governance since the pandemic began. We provide a sampling of others here.

- The administration of the **College of Saint Rose** (New York) announced in December 2020 that it would be discontinuing twenty-five undergraduate, graduate, and certificate programs, resulting in the elimination of more than one-fifth of the institution's tenured and tenure-track faculty positions by December 2021. The college's press release reads: "Many of the programs have declining or historically low enrollment. Other degree or certificate programs were eliminated because the cost to maintain them was higher than the revenue generated by enrollment."[38] It is worth noting that Saint Rose's administration implemented a program-prioritization process just six years ago to address a structural deficit. Although it resulted in the elimination of twenty-three tenured and tenure-track faculty positions and landed the college on the AAUP censure list in 2016, where it remains, the prioritization process obviously did not have the intended result of financial stabilization.
- In October 2020, the administration of **Ithaca College** (New York) announced its plan to terminate 130 of roughly 550 faculty positions because of "low enrollment." The pandemic was an "accelerant," according to the provost, but enrollment at the college had already declined by more than seven hundred over the previous decade.[39] The college subsequently "created a dashboard to analyze which departments are bringing the fewest students to the college."[40] As has been the case at a number of institutions, students joined with faculty and

36. For the governance challenges of the 1970s, see "The Role of the Faculty in Conditions of Financial Exigency," *Academe*, July–August 2013, 127–29.

37. Hans-Joerg Tiede, "On the Impact of the COVID-19 Pandemic on Shared Governance: Results from the 2021 AAUP Shared Governance Survey," unpublished.

38. "Saint Rose to Discontinue Academic Programs as Part of Proactive Plan to Address Financial Challenges," December 8, 2020, https://www.strose.edu/2020/12/08/saint-rose-to-discontinue-academic-programs-as-part-of-proactive-plan-to-address-financial-challenges/.

39. Colleen Flaherty, "Ithaca Announces Sweeping Faculty Cuts," *Inside Higher Ed*, October 15, 2020, https://www.insidehighered.com/news/2020/10/15/ithaca-announces-sweeping-faculty-cuts.

40. Alyshia Korba, "IC to Cut 130 Faculty Positions Due to Low Enrollment," *The Ithacan*, October 8, 2020, https://theithacan.org/news/ic-to-cut-130-faculty-positions-due-to-low-enrollment/.

alumni in vocally opposing the proposed cuts.[41] Nonetheless, at the end of February 2021, the college's president and provost accepted all of the recommendations of the ad hoc Academic Prioritization Process Implementation Committee, including the elimination of 116 full-time-equivalent faculty positions and twenty-six departments, programs, and majors.[42]

- Ongoing financial problems made worse by the pandemic led the administration of **Marquette University** (Wisconsin) to announce in December 2020 a plan to cut the positions of at least 225 faculty and staff members in order to reduce the institution's "overall compensation" as part of the fiscal year 2022 budget.[43] The same budget, however, includes a $12.1 million surplus that "will provide room for investing in projects of strategic priority."[44] In addition to opposition to the board's plan from various campus entities, a broad national coalition of faculty and student activists responded with an antiausterity petition late in the fall 2020 semester opposing "the rash of austerity-driven layoffs, firings and program eliminations occurring and under consideration by Jesuit institutions across the United States."[45] In a mid-February 2021 open letter to the "Marquette community," the executive committee of the university's AAUP chapter, responding to an announcement by the provost a few days earlier that "substantial numbers" of non-tenure-track faculty positions would not be renewed, "strongly urge[d] each and every faculty member, whether or not an AAUP member, to reach out to senior University leadership right now to object to such NTT staff reductions until there has been a full explanation as to why such actions need to be taken now, when the dollars necessary to avoid this action will be available."[46]
- The administrations of **five universities in the Pennsylvania State System of Higher Education** moved during the fall 2020 semester to lay off more than one hundred full-time faculty members, the largest retrenchment in the system's history. According to the Philadelphia Inquirer, the ninety-three thousand-student system has lost 22 percent of its enrollment since 2010—a trend that has been worsened by the pandemic.[47]
- Citing the need to be "innovative and flexible" in dealing with COVID-19, the governing board of **Saint Leo University** (Florida) voted in November to no longer recognize the faculty union and announced it was moving forward with a new governance structure for the institution. The board chair claimed that by "creating a new shared governance structure" the governing board was enabling "faculty members [to] work closely with the administration to quickly adapt and meet the needs of [their] students."[48]
- In August 2020, the Board of Trustees of the **State University of New York** appointed a new chancellor to head the system without conducting a search—or even, evidently, considering any other candidates. The reasons for the board's action, which flagrantly violates basic principles of academic governance and AAUP-recommended procedures for the selection of administrators, included the "urgency" of the situation, according to board member Stanley

41. Colleen Flaherty, "The Growing Ithaca Resistance," *Inside Higher Ed*, February 8, 2021, https://www.insidehighered.com/news/2021/02/08/growing-resistance-against-cuts-ithaca.

42. Alexis Monroe, "Ithaca College Approves Plan for Faculty Cuts," *The Ithacan*, February 25, 2021, https://theithacan.org/news/ithaca-college-approves-plan-for-faculty-cuts/.

43. Rich Kremer, "Marquette University to Cut 225 Faculty and Staff Positions by July 2022," Wisconsin Public Radio, December 10, 2020, https://www.wpr.org/marquette-university-cut-225-faculty-and-staff-positions-july-2022#.

44. Marquette University Fiscal Year 2022 Approved Operating Budget, https://www.wpr.org/sites/default/files/fy22approvedoperatingbudget.pdf.

45. "Anti-Austerity Petition at Jesuit Institutions," quoted in Elizabeth Redden, "Jesuit College Workers Unite," *Inside Higher Ed*, December 1, 2020, https://www.insidehighered.com/news/2020/12/01/workers-and-student-groups-across-jesuit-colleges-form-alliance-protest-cuts-people. For an account of the local protest, see Lilah Burke, "Discharges, Demographics, and Discipline," *Inside Higher Ed*, November 4, 2020, https://www.insidehighered.com/news/2020/11/04/marquette-faces-student-and-faculty-pushback-planned-cuts.

46. "A New Beginning in Shared Governance at Marquette University," https://marquetteaaup.wordpress.com/2021/02/17/a-new-beginning-in-shared-governance-at-marquette-university.

47. Susan Snyder, "Pennsylvania's State Universities Move to Lay Off More Than 100 Full-Time Faculty," *Philadelphia Inquirer*, October 30, 2020, https://www.inquirer.com/education/faculty-university-layoff-largest-enrollment-decline-20201030.html.

48. Colleen Flaherty, "Saint Leo U Unrecognizes Faculty Union," *Inside Higher Ed*, November 16, 2020, https://www.insidehighered.com/quicktakes/2020/11/16/saint-leo-u-unrecognizes-faculty-union.

Litow's August 28 commentary in *Barron's* magazine. Litow's additional justification is not only telling but increasingly common among members of governing boards: "Eschewing a national search and selecting an in-house candidate is common practice for many global companies in the selection of their CEOs. In fact, during my near 25-year tenure at IBM, the majority of CEOs at large U.S. companies were selected that way."[49]

- The administration of the **University of Vermont** announced in early December 2020 a plan to cut twelve majors, eleven minors, and four graduate degree programs, all within the College of Arts and Sciences, ostensibly to address what the dean called a "long-term structural deficit." He informed the faculty that the majors he chose for elimination "enrolled 25 or fewer students . . . or graduated five or fewer students in the major . . . on average over the last three academic years." A similar process was used for identifying the minors for discontinuance. In an interview, the dean stated that he "did not consult with the faculty over this specific proposal. I could not see how that could be done when I was proposing closing programs." The proposed program closures would save an estimated $600,000 to $800,000 at the same time that the university "reported an increase of $24 million in its net position this year, primarily due to an increase in the value of its $562-million endowment."[50]

Perhaps the most obvious shared element among these examples and the eight cases discussed in this report is the pandemic's exacerbation of years of preexisting financial difficulties caused primarily by stagnant or declining enrollments at small private institutions coupled with, at public institutions, ever-lower levels of state funding.

Regarding the former cause, this investigating committee is forced to question whether governing boards and administrations have met the fiduciary and managerial responsibilities identified in the *Statement on Government*. According to the standards set forth in that document, the board "plays a central role in relating the likely needs of the future to predictable resources; it has the responsibility for husbanding the endowment; [and] it is responsible for obtaining needed capital and operating funds." The president is "largely responsible for the maintenance of existing institutional resources and the creation of new resources." It appears that boards and administrations at institutions that endured years of financial trouble before the onset of the pandemic may simply have failed to fulfil these obligations. Corrective action taken during those years, if taken at all, was obviously ineffective—and then the pandemic struck.

The committee is also compelled to reiterate the crucial importance of the faculty's routine participation in budgetary decision-making. While the faculty at the colleges and universities under investigation had general knowledge—or at least an impression—of their respective institutions' finances, regular faculty involvement in the development of the budget appeared minimal. The AAUP's statement *The Role of the Faculty in Budgetary and Salary Matters* stipulates that

> [t]he faculty should participate both in the preparation of the total institutional budget and (within the framework of the total budget) in decisions relevant to the further apportioning of its specific fiscal divisions (salaries, academic programs, tuition, physical plant and grounds, and so on). The soundness of resulting decisions should be enhanced if an elected representative committee of the faculty participates in deciding on the overall allocation of institutional resources and the proportion to be devoted directly to the academic program. This committee should be given access to all information that it requires to perform its task effectively, and it should have the opportunity to confer periodically with representatives of the administration and governing board.

These recommendations were seldom followed at the institutions under investigation. Instead, their trustees and presidents, most of whom suddenly began operating in a state of panic after years of fiscal mismanagement, seized upon the pandemic to assert the need to "right-size," "be nimble," "realign," "innovate," "be decisive," and "take bold action" by unilaterally altering their institutions' governance structure, curriculum, and labor force, thus creating an acute crisis in academic governance.

49. "SUNY Needed a Chancellor, Not a Lengthy Search for One," *Barron's*, August 28, 2020, https://www.barrons.com/articles/suny-needed-a-chancellor-not-a-lengthy-search-for-one-51598619592. SUNY has been on the AAUP's list of censured administrations since 1978.

50. Colleen Flaherty, "Not-So-Fait Accompli," *Inside Higher Ed*, December 7, 2020, https://www.insidehighered.com/news/2020/12/07/u-vermont-faculty-members-pledge-fight-planned-cuts-liberal-arts.

The baneful results have included the loss of faculty members' careers and livelihoods, the cheapening of students' educations, and the transformation of institutions' identities.[51] Absent a recognition by college and university leaders of their chronic failure to exercise appropriate fiduciary responsibility and of the dire consequences of their actions during the past year, as well as a meaningful role for the faculty in budgetary matters going forward, this committee is not sanguine about the prospects of recovery from the current crisis by the institutions under investigation and other similarly situated colleges and universities.

B. Faculty Participation in Ad Hoc Governance Processes

Faculty members at the investigated institutions faced the dilemma of either participating in ad hoc governance processes they knew to be flawed in the hope of shaping their outcomes or refusing on principle to participate at all, thereby allowing administrators and board members to move forward without them. As the faculty members who work most closely with the administration and, where applicable, the governing board, faculty senate leaders appeared to feel this tension particularly acutely.

Ad hoc governance processes and bodies—task forces, working groups, special committees, and the like—emerged at institutions across the country immediately after the onset of the COVID-19 pandemic, including at most of those under investigation here. While the AAUP generally questions the establishment of such bodies in lieu of existing faculty governance bodies, we also recognize the need for timely coordination and communication across the campus in the earliest days of the pandemic. Last spring decisions needed to be made quickly, for example, to close campuses and move instruction online. Trouble arises, however, when such ad hoc groups encroach on and, worse, circumvent the existing faculty governance structure. That is precisely what happened at most of the institutions we investigated.

When faculty members opt to participate in a makeshift governance process as part of such a group, they should do so under the same conditions that govern their participation in the standing governance structure: they should be elected by the faculty rather than appointed by the administration, and they should be free to discuss the body's work with their colleagues and report regularly to them, as called for in the *Statement on Government* and derivative AAUP policy documents such as *Confidentiality and Faculty Representation in Academic Governance*. As noted earlier in this report, the latter asserts that, "except in personnel matters, imposing a precondition of confidentiality on faculty representatives serving on institutional governance bodies is incompatible with AAUP-supported governance standards." Yet administrations imposed confidentiality agreements on faculty representatives at most of the institutions we investigated. The statement concludes with recommendations with which this committee fully concurs: (1) "Faculty members should not agree to preemptive confidentiality mandates or agreements" and (2) "Faculty representatives should be mindful of their responsibility to keep their constituents informed and to seek their opinions."

C. Suspension of Faculty Handbooks

Sudden, unilateral decisions by governing boards or administrations to set aside an institution's regulations, in whole or in part, amount to declarations that agreed-upon rules and procedures—which should obtain under all conditions—can be discarded altogether in moments of crisis. We note that the decisions made at the eight institutions under investigation were made in a political period notable for the destruction of long-standing norms of good governance in the United States and that they are all the more alarming for that reason. It remains to be seen whether such norms, once shattered, can be pieced back together or whether we are now in the domain of Humpty-Dumpty, where what is broken cannot be mended and words can have any meaning that anyone wishes to attribute to them. That such conditions could exist on college and university campuses is particularly deplorable and does great harm to faculty and staff morale, mutual trust, and the "joint effort" called for under the *Statement on Government*.

But over the long term, sudden decisions to revise faculty handbooks unilaterally—whether made by administrators or trustees—are possibly even more corrosive, since the disaster-management procedures enshrined in those revisions may become permanent aspects of the governance of the institutions that adopt them and may acquire an unfortunate veneer

51. See this moving account by Haydyn Foulke, a junior at Guilford College: "My Education Has Been Cheapened," *The Guilfordian*, November 19, 2020, https://www.guilfordian.com/opinion/2020/11/19/my-education-has-been-cheapened/.

of legitimacy as a result. We therefore urge faculty members, especially those serving in their institution's faculty senate or similar representative body, to be vigilant about changes to handbooks that may irrevocably alter the character of academic employment at their institutions.

D. Force Majeure–Type Provisions

Force majeure–type clauses in collective bargaining agreements, faculty handbooks, faculty contracts, or letters of appointment provide administrations with a nuclear option that nullifies all the other financial exigency–related provisions of those documents. When such a clause is incorporated into a collective bargaining agreement, invoked by the administration, and upheld by binding arbitration, such as occurred at the University of Akron, the faculty is left with little recourse. Historically, the AAUP takes the position that Association-supported principles and standards take precedence over the provisions of collective bargaining agreements when such provisions contravene those principles and standards, even when the bargaining agent is an AAUP chapter, a stance professional and ethical rather than legal in nature. This was, for example, the position upheld in the Association's 2012 investigation at the University of Northern Iowa, and it provided an incentive for the UNI administration to return to the bargaining table and abandon its plans for program closures and layoffs of tenured faculty. As the authors of the Katrina report observed, handbook or CBA provisions allowing an administration to invoke force majeure (or catastrophic conditions, act of God, extraordinary circumstances, and the like) to nullify existing policies, unilaterally shutter programs, and terminate tenure are inimical to principles and standards of academic freedom and governance. Faculty should therefore steadfastly oppose their inclusion in CBAs, faculty contracts and letters of appointment, and faculty handbooks.

E. Financial Exigency

At most of the institutions under investigation, restoring or maintaining financial health was the board and administration's rationale for abandoning institutional regulations, disregarding fundamental principles and practices of academic governance, discontinuing academic programs, and terminating tenured appointments—yet financial exigency was not declared at any of the eight. In fact, aside from Lincoln University (Missouri) in 2020, the committee is not aware of any institutions that have declared a state of financial exigency because of the pandemic.

The reluctance to do so is not new. The AAUP's 2013 report *The Role of the Faculty in Conditions of Financial Exigency* pointed out that "most colleges and universities are not declaring financial exigency even as they plan for widespread program closings and terminations of faculty appointments." The report therefore proposed changing the Association's definition of exigency from "an imminent financial crisis that threatens the survival of the institution as a whole and that cannot be alleviated by less drastic means" than the termination of faculty appointments to "a severe financial crisis that fundamentally compromises the academic integrity of the institution as a whole and that cannot be alleviated by less drastic means," a proposal subsequently codified in the AAUP's *Recommended Institutional Regulations*. The previous standard, as described in the AAUP's 2004 report *Financial Exigency, Academic Governance, and Related Matters*, assumed that "the survival of the institution in its entirety, not just a part of it, must be at stake" to justify a declaration of financial exigency. Under the current standard, the AAUP acknowledges that a crisis threatening the core educational mission of an institution—but not its very survival—can constitute grounds for the declaration of financial exigency. As the 2013 report explains, "Our new definition names a condition that is less dramatic than that in which the very existence of the institution is immediately in jeopardy but is vastly more serious and threatening to the academic integrity of the institution than ordinary (short- and long-term) attrition in operating budgets."

Even when their regulations incorporated this less strict criterion, the institutions under investigation did not declare financial exigency. Instead, in several cases, administrations seem to have used some combination of Regulations 4c and 4d—reducing and discontinuing academic programs as a way of addressing a bleak, but not exigent, financial outlook—as a basis for terminating faculty positions. Such an approach is, of course, incompatible with AAUP-supported standards.

So too is the creation of an alternate category of financial crisis, which the governing board of John Carroll University attempted during the fall 2020 semester by proposing an amendment to the institution's financial exigency policy that establishes a condition called "budgetary hardship." The threshold for declaring "budgetary hardship" is far lower than that for financial exigency: the board may invoke it upon a projected 6 percent loss in cumulative net revenue over a three-year period. In addition, a declaration of "budgetary hardship" would empower the administration to terminate tenured appointments without appeal if the president deems it necessary to eliminate the shortfall in net revenue. An attorney for the legal firm retained by JCU's board, Husch Blackwell in Kansas City, Missouri, is reportedly working with nine other institutions to incorporate "budgetary hardship" provisions into their faculty handbooks.[52] Needless to say, the creation of such a standard would effectively render tenure meaningless at those institutions. While the investigating committee concurs with the assertion in *The Role of the Faculty in Conditions of Financial Exigency* that "the faculty should be centrally involved in deliberations about exigency," we also believe that faculty members should object to any attempt to introduce new categories of financial crisis that would circumvent AAUP-supported standards on financial exigency.

F. Academic Freedom and Tenure

The investigating committee encountered scant evidence that the governing boards and administrations of the investigated institutions terminated the services of the affected faculty members based on considerations that violated their academic freedom; nevertheless, the committee did encounter overwhelming evidence that tenure—and, thus, academic freedom—has faced a frontal assault at these institutions and many others in the wake of the pandemic. As we write this report, Kansas has emerged as a major battle site. In a unanimous vote at the end of January 2021, the state's board of regents, which governs six public universities, approved a policy that extends through the end of 2022 allowing for "emergency" terminations and suspensions of faculty positions—including tenured positions. The board's rationale was "the extreme financial pressures placed on the state universities due to the COVID-19 pandemic, decreased program and university enrollment, and state fiscal issues." The previous policy entailed declaring financial exigency in order to terminate tenured faculty appointments, a process consistent with Regulation 4 of the *Recommended Institutional Regulations*. Under the regents' new policy, no declaration of financial exigency is necessary, and faculty members whose appointments are terminated or suspended would not be entitled to an adjudicative hearing.[53] We obviously cannot know whether Kansas will prove to be a bellwether. Even if it does not, however, the institution of tenure, which serves as the foundation of academic freedom in this country's colleges and universities, has taken a serious hit over the past year, and not only at the institutions under investigation.

G. Adequacy of Institutional Policies

The policies and procedures at the investigated institutions were generally adequate, yet boards and administrations, in the interest of rapid decision-making, chose to ignore, revise, or circumvent them, including those relevant to areas where the faculty exercises primary responsibility. Most of the institutions' faculty handbooks cited or reproduced AAUP policy statements, and their governance structures included elected faculty bodies to which administrations had previously deferred in areas of faculty primacy. The general result, at least before the pandemic, was a climate of mutual respect, clear roles and responsibilities for each institutional component, and the "joint effort" prescribed in the *Statement on Government*, even if there were also suspicious minds and occasional quarrels between the faculty and the administration or governing board.

Adequate institutional policies and procedures as well as a functioning faculty governance structure are features of an effectively operating college or university. But they are rendered meaningless when governing boards and administrations unilaterally jettison them, no matter the basis for doing so. Such action does irreparable damage to students' learning experiences; to the working relationship between the faculty, administration, and board; and to the operation and reputation of not only the individual institution but the entire system of higher education.

H. Adequacy of AAUP Policies

Association policies and regulations regarding institutional governance, financial exigency, academic freedom and tenure, and academic due process remain, in the words of the 2007 report on Hurricane Katrina, "sufficiently broad and flexible to accommodate even

52. According to an October 20, 2020, memorandum to the faculty from JCU's board of directors.

53. Colleen Flaherty, "Suspending the Rules for Faculty Layoffs," *Inside Higher Ed*, January 22, 2021, https://www.insidehighered.com/news/2021/01/22/firing-professors-kansas-just-got-lot-easier.

the inconceivable disaster." We found no evidence that relevant AAUP-supported policies failed in any of the cases under investigation. Indeed, at most of the institutions included in this investigation, those policies were never given a chance to demonstrate their efficacy, either because they did not exist in institutional regulations or, more commonly, because they were unilaterally abandoned by the administration and governing board. Put simply, there continues to be no evidence for the oft-repeated claim by administrators and board members that AAUP policy statements are inadequate or outdated.

I. Outlook for the Future

Shared academic governance has been under severe pressure since the onset of the pandemic. Though it would be premature to say that we have entered a new era of institutional governance in advance of what some observers are calling "the great contraction" in American higher education, the evidence already before us suggests that this has been a watershed moment.[54] There is no question that many colleges and universities are in financial distress, and many more will face daunting challenges in the next decade. The question is whether robust shared governance will survive those challenges. For that to happen, governing boards, administrations, and faculties must make a conscious, concerted, and sustained effort to ensure that all parties are conversant with, and cultivate respect for, the norms of shared governance as articulated in the *Statement on Government of Colleges and Universities*. ■

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Investigating Committee

The Committee on College and University Governance has by vote authorized publication of this report on the AAUP website and in the *Bulletin of the American Association of University Professors.*

Chair: **MICHAEL DECESARE*** (Sociology), Merrimack College

Members: **RACHEL IDA BUFF** (History), University of Wisconsin–Milwaukee; **ALLISON BUSKIRK-COHEN** (Psychology), Delaware Valley University; **BETHANY CARSON** (English) Santa Fe Community College; **RUBEN J. GARCIA*** (Law), University of Nevada, Las Vegas; **SHAWN GILMORE** (English) University of Illinois at Urbana-Champaign; **PIPPA HOLLOWAY*** (History), University of Richmond; **SUSAN JAROSI*** (Art History), Hamilton College; **JULIA SCHLECK** (English), University of Nebraska–Lincoln; **BRIAN TURNER** (Political Science), Randolph-Macon College; **IRENE MULVEY** (Mathematics) Fairfield University, *ex officio*

*Did not participate in the vote.

54. See Lee Gardner, "The Great Contraction: Cuts Alone Will Not Be Enough to Turn Colleges' Fortunes Around," *Chronicle of Higher Education*, February 15, 2021, https://www.chronicle.com/article/the-great-contraction.