

UNIVERSITY REVIEW COMMITTEE  
Friday, February 14, 2014  
9 a.m., Hovey 401D  
MINUTES

Members present: Angela Bonnell, Phil Chidester, Diane Dean, Doris Houston (via telephone), Domingo Joaquin, Sheryl Jenkins, David Rubin, James Wolf, and Sam Catanzaro (ex officio)

Members not attending: Bill O'Donnell

Others attending: Bruce Stoffel (recorder)

I. Call to order

Chairperson David Rubin called the meeting to order at 9:05 a.m. Rubin welcomed Diane Dean, the newly-elected representative from the College of Education.

II. Approval of minutes from the November 21, 2013 meeting

Sheryl Jenkins moved, Phil Chidester seconded approval of minutes from the November 21, 2013 meeting. Chairperson Rubin declared the minutes approved.

III. Discussion item: Draft faculty suspension and dismissal policy and procedure

The committee reviewed and discussed a draft policy document and a draft procedural steps document regarding suspension and dismissal of tenured and tenure track faculty members. The documents were prepared by Sam Catanzaro. Catanzaro explained the history and intent of the documents.

Catanzaro noted that ASPT policies adopted in May 2011 address faculty suspension and dismissal in broad terms. Section XI.B.2 states that "procedures and standards for dismissal shall be according to policies approved by the Academic Senate and should adhere to principles set forth by the American Association of University Professors." Catanzaro reported that he has encountered only a few situations related to suspension and dismissal of faculty members over the past four to five years, less than one case per year on average. He recommends that the University adopt a sound policy to guide suspension and/or dismissal cases before the next case arises.

Catanzaro's predecessor, Chuck McGuire, drafted suspension and dismissal procedures a few years ago. Catanzaro said that he has followed McGuire's work in preparing the draft documents. Catanzaro has also consulted American Association of University Professors (AAUP) guidelines (which he has also disseminated to committee members) and has reviewed policies and procedures in place at other universities. Catanzaro noted that the policy and procedural steps he has drafted are intended to ensure due process for all parties and are predicated on the principal that the burden of making a case for suspension or dismissal lies with the University. Assuming that a faculty member subject to dismissal proceedings uses all available appeals, processing of a dismissal case to conclusion should take about one semester, he said.

Catanzaro reported that the draft documents have been sent to the Executive Committee of the Academic Senate and will be reviewed by the Faculty Affairs Committee of the Senate. If the Senate determines that the documents relate only to ASPT policies, they will be subject to a vote by the Faculty Caucus of the

Senate. If the Senate determines that the documents are related to additional university policies beyond the ASPT document, they will be subject to a vote by the full Senate.

James Wolf asked if Catanzaro is asking the committee to consider policy or steps in processing a case. Catanzaro responded that he is asking the committee to consider both.

Noting overlap in content, Rubin asked if the policy and procedural steps documents are separate items or if one is embedded within another. Catanzaro explained that they are separate documents. Procedure is usually more extensive than policy, he said. By keeping the documents separate, procedural steps can be amended without affecting the policy document.

Committee members raised questions regarding provisions of the documents related to non-paid suspension.

Wolf noted that non-paid suspension is mentioned twice in the documents, but he finds no explanation of when a faculty member would be paid or would not be paid while suspended. Wolf expressed concern that a faculty member subject to suspension and dismissal proceedings might not be able to afford defense assistance. Wolf asked that the documents be very clear about circumstances warranting unpaid leave. Rubin noted that the document as drafted gives the University prerogative in determining if a faculty member should be paid or not be paid while suspended. Wolf asked that the documents be explicit in this matter.

Doris Houston expressed her opinion that the documents should include the right of the University to assess non-paid leave. Rubin said that if a faculty member cannot fulfill his faculty duties, then non-paid leave would make sense. Catanzaro offered as an example a situation that occurred at an Alabama university. A faculty member shot colleagues attending a faculty meeting. Because it was clear to all that the faculty member had committed the crime, assessing non-paid suspension would have been appropriate. It is important that we be good stewards of public funding, he said. Another situation warranting unpaid suspension would be a faculty member not showing up for faculty duties, Chidester offered.

Committee members then discussed whether a faculty member should be paid back wages and reimbursed for defense expenses if there is not a finding against the faculty member.

Houston asked that more explicit language be added to the documents to address who pays for counsel, the University or the faculty member subject to the proceedings. Houston also asked that provisions regarding reinstatement of salary and payment of faculty member expenses be clarified. Catanzaro said he would consult legal counsel regarding this issue.

Related to counsel, Chairperson Rubin asked if Shane McCreery represents the University or faculty when addressing a complaint. Catanzaro explained that McCreery is responsible for university compliance with policies and procedures related to equal opportunity, ethics, and access and that McCreery's role is to investigate complaints and prepare reports for the president. Rubin asked whether a faculty member receiving advice from McCreery needs to seek separate counsel. Catanzaro explained that McCreery advises the proper channels, but faculty members have the right to pursue other approaches. McCreery identifies options for faculty members seeking redress but does not recommend actions, Catanzaro said.

Referring to item 8.vii on page 5 of the draft policy document, Angela Bonnell noted that AAUP guidelines refer to verbatim proceedings but the draft policy does not. She asked if the difference is intentional or an oversight. Catanzaro responded that the passage cited by Bonnell could be clearer. He

suggested that audio or video records might be preferable to written records. Bonnell asked who would be allowed to access the records. Catanzaro responded that any party to the proceedings could do so.

The issue of faculty ranks to which the policy applies was then discussed by the committee.

Rubin asked if the policy is intended only for tenured faculty members. Catanzaro responded that the policy would apply to any employee subject to ASPT policies, however it would likely be more expedient to follow non-reappointment policies and procedures in matters involving probationary (tenure track) faculty members.

Bonnell asked if the policy applies to administrators holding both academic professional appointments and faculty rank. Catanzaro responded that the policy applies to such employees only with respect to their faculty status. He stressed that the policy under consideration relates to tenure status rather than employment. Rubin asked if such an employee could retain his or her academic/professional appointment if faculty status has been terminated. Catanzaro responded that it would depend on the nature of the position. An employee in a position requiring the incumbent to hold faculty status (e.g., a dean) would likely be suspended or dismissed if faculty status has been terminated. An employee in a position that does not require faculty status might not automatically be suspended or dismissed, at least theoretically. Removing a faculty member from an administrative post is the purview of the responsible chairperson or dean. It is not an issue involving suspension or dismissal of tenure.

Chidester asked if a faculty member could have his or her faculty status suspended or terminated in accordance with the policy but then be reassigned to an administrative post. Catanzaro responded that the University would not likely pursue dismissal of someone who could be reassigned.

Rubin asked how the policy relates to faculty members whose program has been terminated. Diane Dean noted that such situations are handled differently. Catanzaro explained that the issue is addressed elsewhere in university policies and procedures. The general principle underlying them is finding the best alternative placement at the University given the expertise of the faculty member, Catanzaro said.

Chidester asked if applicability of the policy to faculty status should be clarified in the documents and if language should be included to clarify that a faculty member dismissed in accordance with the policy has his or her tenure revoked. That is implied in the documents, Catanzaro said, but perhaps should be made clearer. He said that the distinction raised by Chidester relates to situation in which a dismissed faculty member later attempts to claim emeritus status.

Rubin asked about categories of retirees and whether emeritus faculty members are subject to the policy. Catanzaro responded that they are not.

Wolf asked if the documents define the term “imminent harm.” Catanzaro said that adequate cause is addressed broadly in XI.B (page 39) of ASPT policies. Chidester suggested that this may need to be further clarified.

Bonnell asked about the intent of the second paragraph of item 1 near the bottom of page 3 of the draft policy (“... the DFSC/SFSC may choose to communicate, in writing, a non-binding advisory recommendation to the Provost on the matter”). Bonnell expressed concern that the provision may be too vague.

Domingo Joaquin requested that the term “administration” be clarified throughout the documents. He cited the last sentence on page 1 and item 4 on page 2 of the draft policy. Rubin agreed that questions could be raised regarding the meaning of the term.

Joaquin asked about item 2 on page 4 of the draft policy regarding composition of the faculty committee formed by the Faculty Caucus to recommend whether formal proceedings should be instituted. The draft policy provides that the college in which the locus of tenure of the faculty member resides shall not be represented on the faculty committee. Joaquin asked that the faculty member be given the option of including a representative from his or her college. Wolf agreed, stating that a representative from the college may understand the circumstances better than representatives from other colleges. Joaquin pointed to a parallel situation in tenure decisions. The College of Arts and Sciences allows faculty members being considered for tenure the option of having the representative on CFSC from his or her home department or school included in the CFSC discussion and vote. Catanzaro explained that the exclusion is common, as it is intended to minimize conflicts of interest. He agreed to investigate options regarding this matter and to seek advice from legal counsel.

The discussion then turned to next steps regarding the draft documents.

Chairperson Rubin asked Catanzaro if the committee should vote on the draft documents. Catanzaro responded that it is the prerogative of the committee whether a vote is to be taken. Rubin expressed his desire to table the matter until changes recommended by committee members have been made.

Dean stated that, although she has not had time to study the draft policy and procedures in depth, it is clear to her that such documents are needed to fill a gap in existing university policies. She expressed concern that a vaguely written policy may not adequately protect all parties in the proceedings. There are gaps in the draft that may need to be filled, she said (e.g., the role of the faculty reaction team). She asked if the committee could discuss the draft documents at the next committee meeting after having had time to carefully re-read the documents in light of this discussion. Wolf agreed, suggesting the need for revisions to better protect faculty members.

Catanzaro offered to summarize notes from this discussion and revise the documents accordingly. He asked Chairperson Rubin to establish a timeline for committee comments on the revised documents. Rubin asked committee members to review and comment on the revised documents via email once circulated by Catanzaro. The committee will then discuss the documents further at its February 27 meeting.

#### IV. Reminder: Update of ASPT document, call for items to review

Chairperson Rubin asked if there are other sections of the ASPT policies the committee might discuss in forthcoming meetings as it prepares for the 2015 ASPT policies revision. Catanzaro offered to send his suggestions prior to the next committee meeting. Those issues will be new business at the next meeting, Rubin said. Rubin asked committee members to be thinking of ASPT issues they feel need clarification or revision.

#### V. Other business

There was no other business.

#### VI. Adjournment

Wolf moved, Bonnell seconded that the meeting be adjourned. Chairperson Rubin adjourned the meeting at 10:10 a.m.

Prepared by:

Angela Bonnell, Secretary

Bruce Stoffel, Recorder

Attachments:

Draft: Procedural Steps for Dismissal (01.23.14.01, Dist. Executive Committee 1/29/14 By Email; Dist. Faculty Affairs Committee)

Draft Policy: Re-assignment, Suspension, and Dismissal for Cause of T/TT Faculty (01.23.14.02, Dist. Executive Committee 1/29/14 By Email; Dist. Faculty Affairs Committee)

Recommended Institutional Regulations on Academic Freedom and Tenure (American Association of University Professors)

1958 Statement on Procedural Standards in Faculty Dismissal Proceedings (Association of American Colleges and Universities, American Association of University Professors)

The Use and Abuse of Faculty Suspensions (American Association of University Professors)

### **01.23.14.01**

#### **Dist. Executive Committee 1/29/14 By Email**

#### **Dist. Faculty Affairs Committee**

#### **Draft: Procedural Steps for Dismissal**

1. The DFSC/SFSC (per ASPT V.C.2) or Dean of the College in which the faculty member's locus of tenure resides will submit a letter to the Provost describing charges that the University has adequate cause to effect dismissal of the faculty member.

If the recommendation to initiate dismissal proceedings comes from the University Administration, the Provost will inform the faculty member in writing of the charges and provide the Dean and DFSC/SFSC with a copy. In such cases, the DFSC/SFSC may choose to communicate, in writing, a non-binding advisory recommendation to the Provost on the matter.

Faculty members being charged with adequate cause for dismissal will only be suspended when there is a reasonable threat of imminent harm to the University, including the faculty member in question, students, and other employees, or when credible evidence of adequate cause for dismissal is available. The administration of the University will inform the faculty member of its rationale for judging that suspension is indicated. In cases when suspension is instituted as a preliminary step to dismissal, the due process for suspension will be followed while dismissal proceedings are underway.

2. The Provost will direct, in writing, the Faculty Caucus of the Academic Senate to select a committee of six faculty members to determine whether, in its view, formal proceedings for the faculty member's dismissal should be instituted. This written direction shall be made within 5 business days of receipt of the letter from the DFSC/SFSC or Dean. The committee will consist of one faculty member from each college except that in which the faculty member's locus of tenure resides. The Faculty Caucus shall meet in executive session within 10 business days of the date of the Provost's written direction to select the committee members.
3. The committee will review each charge contained in the letter alleging adequate cause, and will have the authority to interview the respondent/faculty member, the Dean, the Department Chair/School Director, and any other person who may have relevant information.
4. The committee will submit their recommendation within 20 business days of the date of the formation of the committee.
5. If the committee recommends that dismissal proceedings should commence, or if the Provost, even after considering a recommendation favorable to the faculty member, determines that a proceeding should be undertaken, a statement of the grounds proposed for the dismissal should be jointly formulated by the committee and the Provost or Provost's representative. If there is disagreement, the Provost or the Provost's

representative shall formulate the statement. The statement shall be formulated within 5 business days of the committee's communication of the recommendation to the Provost.

6. The Provost shall communicate in writing to the faculty member: (1) the statement of grounds for dismissal; (2) information regarding the faculty member's procedural rights; and (3) a statement informing the faculty member that, at the faculty member's request, a hearing will be conducted by the Faculty Review Committee (FRC) of Illinois State University to determine whether he or she should be removed from the faculty position on the grounds stated. This communication to the faculty member shall be delivered within 5 business days of the formulation of the statement. The hearing date should be far enough in advance to permit the faculty member to reasonably formulate and prepare a defense, and at least 10 business days from the date of the Provost's letter communicating the decision to the faculty member.
7. The faculty member should state in reply no later than five business days before the time and date set for the hearing whether he or she wishes a hearing. If a hearing is requested, the faculty member shall answer the statements in the Provost's letter in writing and submit this document to the Provost and the FRC not less than one calendar week before the date set for the hearing.
8. The Faculty Review Committee (FRC):
  - a. Shall consider the statement of grounds for dismissal already formulated and the faculty member's response before the hearing;
  - b. If the faculty member has not requested a hearing, the FRC may consider the case on the statement of grounds and the reply and any other obtainable information and decide whether the faculty member should be dismissed.
  - c. If the faculty member has requested a hearing, the FRC shall hold a hearing:
    - i. The FRC shall decide whether the hearing is public or private;
    - ii. If facts are in dispute, testimony may be taken or other evidence received;
    - iii. The Provost or a designee shall attend the hearing;
    - iv. The FRC will determine the order of proof, and may secure the presentation of evidence important to the case;
    - v. The faculty member shall have the option of assistance from counsel or other advisor, whose role shall be limited to providing advice to the faculty member rather than actively engaging in the proceedings;
    - vi. The faculty member shall have the assistance of the committee in securing the attendance of witnesses;
    - vii. The proceedings will be recorded at the expense of the University;
    - viii. The Provost's representative and the faculty member shall present evidence. Each may request the committee in writing to ask witnesses to answer specific questions. Unless special circumstances warrant, it will not be necessary to follow formal rules of court procedure. Appropriate procedure will be determined by the FRC.

- ix. The FRC shall permit oral argument and summation by the Provost's representative and the faculty member.
  - x. The FRC may request written briefs by the parties.
- d. The FRC shall reach its decision promptly in conference, on the basis of the hearing if one was held, and submit a full written report to the Provost and the faculty member. The written report shall be submitted to the Provost within 5 business days of the hearing. A record of any hearing should be made available to the Provost and to the faculty member.
9. The Provost shall review the full report of the FRC for final action. If the Provost disagrees with the decision of the FRC, s/he shall request the FRC to reconsider the report. The Provost shall then make a final decision whether the faculty member should be dismissed. The Provost's final decision shall be communicated to the faculty member within 5 business days of the final report of the FRC (after reconsideration, if any).
10. The faculty member may appeal the Provost's decision to the President, who shall make a final decision, stating whether the faculty member shall be retained or shall be dismissed. Such appeal shall be request in writing within 5 business days of the Provost's. The President shall communicate a decision to the faculty member, the Provost, Dean, Chair, and DFSC/SFSC within 5 business days of the written request for appeal.
11. Except for such simple announcements as may be required, covering the time of the hearing and similar matters, public statements about the case by either the faculty member or administrative officers should be avoided so far as possible until the proceedings have been completed. Announcement of the final decision should include a statement of the FRC's original decision, if this has not previously been made known.

## **01.23.14.02**

**Dist. Executive Committee 1/29/14 By Email**

**Dist. Faculty Affairs Committee**

### **Draft Policy: Re-assignment, Suspension, and Dismissal for Cause of T/TT Faculty**

#### **Definitions:**

*Reassignment* occurs when a faculty member's duties are changed by a department chair/director consistent with ASPT Policies VII and Policy 3.3.6. The faculty member is still fully engaged in academic activities. Chairs/directors may be bound to follow procedures in department/school by-laws when fulfilling their responsibilities for faculty assignments under these policies.

*Suspension* occurs when a faculty member is temporarily relieved of academic duties. The faculty member could be on paid or unpaid status.

*Dismissal* occurs when a faculty member's employment relationship with the University is terminated by the University.

#### **Statement on Recommended Procedural Timelines**

Each step in the procedures described below should be completed as soon as is practicable, and normally in the time frame indicated. However, the President or Provost may extend these deadlines for good reason, and concerned parties may request consideration for doing so. The President, Provost, or their designee will communicate extensions of the normal timelines provided below in writing to all concerned parties. Such extensions shall not constitute a procedural violation of this policy.

#### **Faculty Reassignment:**

Assignments of faculty to administrative duties are the responsibility of the Chair/Director (Policy 3.3.6). Faculty assignments to administrative duties typically include faculty consultation as part of a process that considers how best to enable faculty to use and develop their expertise and interests in the pursuit of the University's mission (ASPT Policies VII.A and VII.B). Re-assignments of faculty from administrative duties (e.g., program director) can be effected immediately when in the best interest of the department/school. In such circumstances, the reason for the reassignment should be provided to the faculty member. All Department/School governance procedures for making or reviewing such reassignments should be followed when applicable. If necessary, temporary reassignments may be made in the interest of the University.

#### **Faculty Suspension**

It is understood that suspension (with or without pay) of faculty members will only be contemplated in circumstances when there is a reasonable threat of imminent harm to the University, including the faculty member in question, students, and other employees or when credible evidence of adequate cause for dismissal is available. The administration of the

University will inform the faculty member of its rationale for judging that suspension is indicated.

Faculty members may be suspended for a specified time period, or with conditions that must be met prior to reinstatement, or as a preliminary step toward dismissal for cause (see below).

A Faculty member in the suspension process is afforded due process. This right is balanced against the University's responsibility to prevent harm to students, other employees, and the institution itself.

### **Procedure**

1. There shall be discussion between the faculty member, the Chair/Director, the Dean, and Provost (or their designees). The intention of this discussion will be to develop a mutually agreeable solution that ensures safety for the University community and educational success of students. This mutually agreeable solution could result in a suspension or a re-assignment as defined above.
2. While discussion is ongoing, the University reserves the right to temporarily re-assign a faculty member from any or all duties, including teaching, in order to prevent harm to the University or members of its community.
3. If a mutually agreeable solution is found, it shall be documented in writing signed by the faculty member and appropriate administrative officers of the university. A mutually agreeable solution should be finalized within 5 business days of initiation of discussion. However, if the parties mutually agree in writing, this period may be extended if such extension would make agreeing to a solution likely. Such an agreement will be communicated to the Dean and Provost within 5 business days of the initiation of discussion.
4. If a mutually agreeable solution cannot be found and the administration determines that suspension is necessary, then the following process will take place.
  - a. The Chair/Director will consult with DFSC/SFSC. Such consultation will entail informing the DFSC/SFSC of the incident(s) that are of concern and the reasons why suspension is indicated. Such consultation will include review of relevant documentation/information (e.g., past performance evaluations; investigation report) and/or advice of Legal Counsel.
  - b. There shall be documentation of the consultation with the DFSC/SFSC. The elected members of the DFSC/SFSC may make a non-binding advisory recommendation to the Chair/Director. Consultation with the DFSC/SFSC, documentation of such, and any recommendations made by the DFSC/SFSC, must be completed within 5 business days.
  - c. Following DFSC/SFSC consultation, the Chair/Director shall consult with the Dean and Provost and provide written notice of a decision to the faculty member, Dean, and Provost within 2 business days. The DFSC/SFSC shall be

informed of the decision. If the reasons for the suspension also constitute adequate cause for dismissal as described below and in ASPT Policies XI.B.1, the written notice shall so indicate, and the dismissal procedures delineated below shall commence.

5. A suspended faculty member may appeal to the President within 5 business days of the written notice from the Chair/Director, as described in 4.c above. Such appeal must be made in writing, with copies provided to the Chair/Director, Dean, and Provost. Appeals may be based on substantive or procedural grounds. The President shall rule on the appeal within 5 business days.
6. Suspended faculty members shall retain their right to file a grievance with the Faculty Academic Freedom, Ethics, and Grievance Committee, if they believe that their academic freedom or the Code of Ethics has been violated. Suspensions will remain in effect while such grievances are adjudicated.
7. Faculty members who are suspended as a preliminary step toward dismissal for cause will retain their right to due process throughout the dismissal proceedings, which shall follow the principles and steps described below.

### **Dismissal of Faculty for Cause**

ASPT Policy V.C.3 provides for initiation of dismissal proceedings by the DFSC/SFSC. University Administration may also initiate dismissal proceedings when it becomes aware of an adequate cause.

ASPT Policy XI.B.1 includes but is not limited to the following examples of adequate causes: lack of fitness to continue to perform in the faculty member's professional capacity as a teacher or researcher; failure to perform assigned duties in a manner consonant with professional standards; and malfeasance.

Termination of faculty due to financial exigency or program termination will follow the process outlined in the ISU Constitution (Article III, Section 4.B.2) and all applicable policies.

### **Procedure:**

1. If the recommendation to initiate dismissal proceedings comes from the Department, School, or College, the DFSC/SFSC (per ASPT V.C.2) or Dean of the College in which the faculty member's locus of tenure resides will submit a letter to the Provost describing charges that the University has adequate cause to effect dismissal of the faculty member.

If the recommendation to initiate dismissal proceedings comes from the University Administration, the Provost will inform the faculty member in writing of the charges and provide the Dean and DFSC/SFSC with a copy. In such cases, the DFSC/SFSC may choose to communicate, in writing, a non-binding advisory recommendation to the Provost on the matter.

If a faculty member being charged with adequate cause for dismissal is suspended as

described above, the due process for suspension will be followed while dismissal proceedings are underway.

2. The Provost will direct, in writing, the Faculty Caucus of the Academic Senate to select a committee of six faculty members to determine whether, in its view, formal proceedings for the faculty member's dismissal should be instituted. This written direction shall be made within 5 business days of date of the letter from the DFSC/SFSC or Dean. The committee will consist of one faculty member from each college except that in which the faculty member's locus of tenure resides. The Faculty Caucus shall meet in executive session within 10 business days of the date of the Provost's written direction to select the committee members.
3. The committee will review each charge contained in the letter alleging adequate cause, and will have the authority to interview the respondent/faculty member, the Dean, the Department Chair/School Director, and any other person who may have relevant information.
4. The committee will submit their recommendation within four calendar weeks of the date of the formation of the committee.
5. If the committee recommends that dismissal proceedings should commence, or if the Provost, even after considering a recommendation favorable to the faculty member, determines that a proceeding should be undertaken, a statement of the grounds proposed for the dismissal should be jointly formulated by the committee and the Provost or Provost's designee. If there is disagreement, the Provost or the Provost's designee shall formulate the statement. The statement shall be formulated within 5 business days of the committee's communication of the recommendation to the Provost.
6. The Provost shall communicate in writing to the faculty member: (1) the statement of grounds for dismissal; (2) information regarding the faculty member's procedural rights; and (3) a statement informing the faculty member that, at the faculty member's request, a hearing will be conducted by the Faculty Review Committee (FRC) of Illinois State University to determine whether he or she should be removed from the faculty position on the grounds stated. This communication to the faculty member shall be delivered within 5 business days of the date of the statement. The hearing date should be far enough in advance to permit the faculty member to reasonably formulate and prepare a defense, and at least 10 business days from the date of the Provost's letter communicating the decision to the faculty member.
7. The faculty member should state in reply no later than five business days before the time and date set for the hearing whether he or she wishes a hearing. If a hearing is requested, the faculty member shall answer the statements in the Provost's letter in writing and submit this document to the Provost and the FRC not less than five business days before the date set for the hearing.

8. The Faculty Review Committee (FRC):
  - a. Shall consider the statement of grounds for dismissal already formulated and the faculty member's response before the hearing;
  - b. If the faculty member has not requested a hearing, the FRC may consider the case on the statement of grounds and the reply and any other obtainable information and decide whether the faculty member should be dismissed.
  - c. If the faculty member has requested a hearing, the FRC shall hold a hearing:
    - i. The FRC shall decide whether the hearing is public or private;
    - ii. If facts are in dispute, testimony may be taken or other evidence received;
    - iii. The Provost or a designee shall attend the hearing;
    - iv. The FRC will determine the order of proof, and may secure the presentation of evidence important to the case;
    - v. The faculty member shall have the option of assistance from counsel or other advisor, whose role shall be limited to providing advice to the faculty member rather than presenting or actively engaging in the proceedings;
    - vi. The faculty member shall have the assistance of the committee in securing the attendance of witnesses. Because the committee cannot compel the participation of a witness, the proceedings shall not be delayed by the unavailability of a witness.
    - vii. The proceedings will be recorded at the expense of the University;
    - viii. The Provost's representative and the faculty member shall present any information helpful to the determination. Each may request the committee in writing to ask witnesses to answer specific questions. Appropriate procedure will be determined by the FRC.
    - ix. The FRC shall permit a statement and closing by the Provost's representative and the faculty member.
    - x. The FRC may request written briefs by the parties.
  - d. The FRC shall reach its decision promptly in conference, on the basis of the hearing if one was held, and submit a full written report to the Provost and the faculty member. The written report shall be submitted to the Provost within 10 business days of the hearing. A record of any hearing should be made available to the Provost and to the faculty member.
9. The Provost shall review the full report of the FRC for final action. If the Provost disagrees with the decision of the FRC, s/he shall request the FRC to reconsider the report. The Provost shall then make a final decision whether the faculty member should be dismissed. The Provost's final decision shall be communicated to the faculty member within 5 business days of the final report of the FRC (after reconsideration, if any).
10. The faculty member may appeal the Provost's decision to the President, who shall make a final decision, stating whether the faculty member shall be retained or shall be dismissed. Such appeal shall be requested in writing within 5 business days of the date of the

Provost's communication of the final decision. The President shall communicate a decision to the faculty member, the Provost, Dean, Chair, and DFSC/SFSC within 5 business days of the written request for appeal.

11. Except for such simple announcements as may be required, covering the time of the hearing and similar matters, public statements about the case by either the faculty member or administrative officers should be avoided so far as possible until the proceedings have been completed. Announcement of the final decision should include a statement of the FRC's original decision, if this has not previously been made known.

# RECOMMENDED INSTITUTIONAL REGULATIONS ON ACADEMIC FREEDOM AND TENURE

*The Recommended Institutional Regulations on Academic Freedom and Tenure set forth, in language suitable for use by an institution of higher education, rules that derive from the chief provisions and interpretations of the 1940 Statement of Principles on Academic Freedom and Tenure and of the 1958 Statement on Procedural Standards in Faculty Dismissal Proceedings. The Recommended Institutional Regulations were first formulated by Committee A on Academic Freedom and Tenure in 1957. A revised and expanded text, approved by Committee A in 1968, reflected the development of Association standards and procedures. Texts with further revisions were approved by Committee A in 1972, in 1976, in 1982, in 1990, in 1999, in 2005, in 2006, and in 2009.*

*The current text is based upon the Association's continuing experience in evaluating regulations actually in force at particular institutions. It is also based upon further definition of the standards and procedures of the Association over the years. The Association will be glad to assist in interpretation of the regulations or to consult about their incorporation in, or adaptation to, the rules of a particular college or university.*

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## Foreword

These regulations are designed to enable the [named institution] to protect academic freedom and tenure and to ensure academic due process. The principles implicit in these regulations are for the benefit of all who are involved with or are affected by the policies and programs of the institution. A college or university is a marketplace of ideas, and it cannot fulfill its purposes of transmitting, evaluating, and extending knowledge if it requires conformity with any orthodoxy of content and method. In the words of the United States Supreme Court, "Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die."

## 1. STATEMENT OF TERMS OF APPOINTMENT

- a. The terms and conditions of every appointment to the faculty will be stated or confirmed in writing, and a copy of the appointment document will be supplied to the faculty member. Any subsequent extensions or modifications of an appointment, and any special understandings, or any notices incumbent upon either party to provide, will be stated or confirmed in writing and a copy will be given to the faculty member.
- b. With the exception of special appointments clearly limited to a brief association with the institution, and reappointments of retired faculty members on special conditions, all full-time faculty appointments are of two kinds: (1) probationary appointments; (2) appointments with continuous tenure.

- c. Except for faculty members who have tenure status, every person with a teaching or research appointment of any kind will be informed each year in writing of the renewal of the appointment and of all matters relative to eligibility for the acquisition of tenure.

## 2. PROBATIONARY APPOINTMENTS

- a. Probationary appointments may be for one year, or for other stated periods, subject to renewal. The total period of full-time service prior to the acquisition of continuous tenure will not exceed \_\_\_\_\_ years,<sup>1</sup> including all previous full-time service with the rank of instructor or higher in other institutions of higher learning, except that the probationary period may extend to as much as four years, even if the total full-time service in the profession thereby exceeds seven years; the terms of such extension will be stated in writing at the time of initial appointment.<sup>2</sup> Scholarly leave of absence for one year or less will count as part of the probationary period as if it were prior service at another institution, unless the individual and the institution agree in writing to an exception to this provision at the time the leave is granted.
- b. The faculty member will be advised, at the time of initial appointment, of the substantive standards and procedures generally employed in decisions affecting renewal and tenure. Any special standards adopted by the faculty member's department or school will also be transmitted. The faculty

member will be advised of the time when decisions affecting renewal or tenure are ordinarily made, and will be given the opportunity to submit material believed to be helpful to an adequate consideration of the faculty member's circumstances.

- c. Regardless of the stated term or other provisions of any appointments, written notice that a probationary appointment is not to be renewed will be given to the faculty member in advance of the expiration of the appointment, as follows: (1) not later than March 1 of the first academic year of service if the appointment expires at the end of that year; or, if a one-year appointment terminates during an academic year, at least three months in advance of its termination; (2) not later than December 15 of the second academic year of service if the appointment expires at the end of that year; or, if an initial two-year appointment terminates during an academic year, at least six months in advance of its termination; (3) at least twelve months before the expiration of an appointment after two or more years of service at the institution.
- d. The institution will normally notify faculty members whose appointments are being renewed of the terms and conditions of their renewals by March 15, but in no case will such information be given later than \_\_\_\_\_.<sup>3</sup>
- e. When a decision not to renew an appointment has been reached, the faculty member involved will be informed of that decision in writing by the body or individual making the decision; the faculty member will be advised upon request of the reasons which contributed to that decision. The faculty member may request a reconsideration by the body or individual making the decision.
- f. If the faculty member so requests, the reasons given in explanation of the nonrenewal will be confirmed in writing.
- g. Insofar as the faculty member alleges that the decision against renewal was based on inadequate consideration, the committee<sup>4</sup> that reviews the faculty member's allegation will determine whether the decision was the result of adequate consideration in terms of the relevant standards of the institution. The review committee will not substitute its judgment on the merits for that of the body or individual that made the decision. If the review committee believes that adequate consideration was not given to the faculty member's qualifications, it will request reconsideration by the body or

individual that made the decision, indicating the respects in which it believes the consideration may have been inadequate. It will provide copies of its findings to the faculty member, the body or individual that made the decision, and the president or other appropriate administrative officer.

### **3. TERMINATION OF APPOINTMENT BY FACULTY MEMBERS**

Faculty members may terminate their appointments effective at the end of an academic year, provided that they give notice in writing at the earliest possible opportunity, but not later than May 15, or thirty days after receiving notification of the terms of appointment for the coming year, whichever date occurs later. Faculty members may properly request a waiver of this requirement of notice in case of hardship or in a situation where they would otherwise be denied substantial professional advancement or other opportunity.

### **4. TERMINATION OF APPOINTMENTS BY THE INSTITUTION**

- a. Termination of an appointment with continuous tenure, or of a probationary or special appointment before the end of the specified term, may be effected by the institution only for adequate cause.
- b. If termination takes the form of a dismissal for cause, it will be pursuant to the procedures specified in Regulation 5.

### **Financial Exigency**

- c. (1) Termination of an appointment with continuous tenure, or of a probationary or special appointment before the end of the specified term, may occur under extraordinary circumstances because of a demonstrably bona fide financial exigency, i.e., an imminent financial crisis that threatens the survival of the institution as a whole and that cannot be alleviated by less drastic means.

[Note: Each institution in adopting regulations on financial exigency will need to decide how to share and allocate the hard judgments and decisions that are necessary in such a crisis.

As a first step, there should be a faculty body that participates in the decision that a condition of financial exigency exists or is imminent, and that all feasible alternatives to termination of appointments have been pursued.<sup>5</sup>

Judgments determining where within the overall academic program termination of appointments may occur involve considerations of educational policy, including affirmative action,

as well as of faculty status, and should therefore be the primary responsibility of the faculty or of an appropriate faculty body.<sup>6</sup> The faculty or an appropriate faculty body should also exercise primary responsibility in determining the criteria for identifying the individuals whose appointments are to be terminated. These criteria may appropriately include considerations of length of service.

The responsibility for identifying individuals whose appointments are to be terminated should be committed to a person or group designated or approved by the faculty. The allocation of this responsibility may vary according to the size and character of the institution, the extent of the terminations to be made, or other considerations of fairness in judgment. The case of a faculty member given notice of proposed termination of appointment will be governed by the following procedures.]

- (2) If the administration issues notice to a particular faculty member of an intention to terminate the appointment because of financial exigency, the faculty member will have the right to a full hearing before a faculty committee. The hearing need not conform in all respects with a proceeding conducted pursuant to Regulation 5, but the essentials of an on-the-record adjudicative hearing will be observed. The issues in this hearing may include:
  - (i) The existence and extent of the condition of financial exigency. The burden will rest on the administration to prove the existence and extent of the condition. The findings of a faculty committee in a previous proceeding involving the same issue may be introduced.
  - (ii) The validity of the educational judgments and the criteria for identification for termination; but the recommendations of a faculty body on these matters will be considered presumptively valid.
  - (iii) Whether the criteria are being properly applied in the individual case.
- (3) If the institution, because of financial exigency, terminates appointments, it will not at the same time make new appointments except in extraordinary circumstances where a serious distortion in the academic program would otherwise result. The appointment of a faculty member with tenure will not be terminated in favor of retaining a faculty member without tenure, except in extraordinary circumstances where a serious distortion of the academic program would otherwise result.
  - (4) Before terminating an appointment because of financial exigency, the institution, with faculty participation, will make every effort to place the faculty member concerned in another suitable position within the institution.
  - (5) In all cases of termination of appointment because of financial exigency, the faculty member concerned will be given notice or severance salary not less than as prescribed in Regulation 8.
  - (6) In all cases of termination of appointment because of financial exigency, the place of the faculty member concerned will not be filled by a replacement within a period of three years, unless the released faculty member has been offered reinstatement and a reasonable time in which to accept or decline it.

**Discontinuance of Program or Department Not Mandated by Financial Exigency<sup>7</sup>**

- d. Termination of an appointment with continuous tenure, or of a probationary or special appointment before the end of the specified term, may occur as a result of bona fide formal discontinuance of a program or department of instruction. The following standards and procedures will apply.
  - (1) The decision to discontinue formally a program or department of instruction will be based essentially upon educational considerations, as determined primarily by the faculty as a whole or an appropriate committee thereof.

[Note: "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.]
  - (2) Before the administration issues notice to a faculty member of its intention to terminate an appointment because of formal discontinuance of a program or department of instruction, the institution will make every effort to place the faculty member concerned in another suitable position. If placement in another position

would be facilitated by a reasonable period of training, financial and other support for such training will be proffered. If no position is available within the institution, with or without retraining, the faculty member's appointment then may be terminated, but only with provision for severance salary equitably adjusted to the faculty member's length of past and potential service.

[Note: When an institution proposes to discontinue a program or department of instruction, it should plan to bear the costs of relocating, training, or otherwise compensating faculty members adversely affected.]

- (3) A faculty member may appeal a proposed relocation or termination resulting from a discontinuance and has a right to a full hearing before a faculty committee. The hearing need not conform in all respects with a proceeding conducted pursuant to Regulation 5, but the essentials of an on-the-record adjudicative hearing will be observed. The issues in such a hearing may include the institution's failure to satisfy any of the conditions specified in Regulation 4d. In such a hearing a faculty determination that a program or department is to be discontinued will be considered presumptively valid, but the burden of proof on other issues will rest on the administration.

#### **Termination Because of Physical or Mental Disability**

- e. Termination of an appointment with tenure, or of a probationary or special appointment before the end of the period of appointment, because of physical or mental disability, will be based upon clear and convincing medical evidence that the faculty member, even with reasonable accommodation, is no longer able to perform the essential duties of the position. The decision to terminate will be reached only after there has been appropriate consultation and after the faculty member concerned, or someone representing the faculty member, has been informed of the basis of the proposed action and has been afforded an opportunity to present the faculty member's position and to respond to the evidence. If the faculty member so requests, the evidence will be reviewed by the Faculty Committee on Academic Freedom and Tenure [or whatever other title it may have] before a final decision is made by the governing board on the recommendation of the administration. The faculty mem-

ber will be given severance salary not less than as prescribed in Regulation 8.

#### **Review**

- f. In cases of termination of appointment, the governing board will be available for ultimate review.

#### **5. DISMISSAL PROCEDURES**

- a. Adequate cause for a dismissal will be related, directly and substantially, to the fitness of faculty members in their professional capacities as teachers or researchers. Dismissal will not be used to restrain faculty members in their exercise of academic freedom or other rights of American citizens.
- b. Dismissal of a faculty member with continuous tenure, or with a special or probationary appointment before the end of the specified term, will be preceded by: (1) discussions between the faculty member and appropriate administrative officers looking toward a mutual settlement; (2) informal inquiry by the duly elected faculty committee [insert name of committee] which may, if it fails to effect an adjustment, determine whether in its opinion dismissal proceedings should be undertaken, without its opinion being binding upon the president; (3) a statement of charges, framed with reasonable particularity by the president or the president's delegate.
- c. A dismissal, as defined in Regulation 5a, will be preceded by a statement of charges, and the individual concerned will have the right to be heard initially by the elected faculty hearing committee [insert name of committee].<sup>8</sup> Members deeming themselves disqualified for bias or interest will remove themselves from the case, either at the request of a party or on their own initiative. Each party will have a maximum of two challenges without stated cause.<sup>9</sup>
  - (1) Pending a final decision by the hearing committee, the faculty member will be suspended, or assigned to other duties in lieu of suspension, only if immediate harm to the faculty member or others is threatened by continuance. Before suspending a faculty member, pending an ultimate determination of the faculty member's status through the institution's hearing procedures, the administration will consult with the Faculty Committee on Academic Freedom and Tenure [or whatever other title it may have] concerning the propri-

ety, the length, and the other conditions of the suspension. A suspension that is intended to be final is a dismissal, and will be treated as such. Salary will continue during the period of the suspension.

- (2) The hearing committee may, with the consent of the parties concerned, hold joint prehearing meetings with the parties in order to (i) simplify the issues, (ii) effect stipulations of facts, (iii) provide for the exchange of documentary or other information, and (iv) achieve such other appropriate prehearing objectives as will make the hearing fair, effective, and expeditious.
- (3) Service of notice of hearing with specific charges in writing will be made at least twenty days prior to the hearing. The faculty member may waive a hearing or may respond to the charges in writing at any time before the hearing. If the faculty member waives a hearing, but denies the charges or asserts that the charges do not support a finding of adequate cause, the hearing tribunal will evaluate all available evidence and rest its recommendation upon the evidence in the record.
- (4) The committee, in consultation with the president and the faculty member, will exercise its judgment as to whether the hearing should be public or private.
- (5) During the proceedings the faculty member will be permitted to have an academic advisor and counsel of the faculty member's choice.
- (6) At the request of either party or the hearing committee, a representative of a responsible educational association will be permitted to attend the proceedings as an observer.
- (7) A verbatim record of the hearing or hearings will be taken and a typewritten copy will be made available to the faculty member without cost, at the faculty member's request.
- (8) The burden of proof that adequate cause exists rests with the institution and will be satisfied only by clear and convincing evidence in the record considered as a whole.
- (9) The hearing committee will grant adjournments to enable either party to investigate evidence as to which a valid claim of surprise is made.
- (10) The faculty member will be afforded an

opportunity to obtain necessary witnesses and documentary or other evidence. The administration will cooperate with the hearing committee in securing witnesses and making available documentary and other evidence.

- (11) The faculty member and the administration will have the right to confront and cross-examine all witnesses. Where the witnesses cannot or will not appear, but the committee determines that the interests of justice require admission of their statements, the committee will identify the witnesses, disclose their statements, and, if possible, provide for interrogatories.
- (12) In the hearing of charges of incompetence, the testimony will include that of qualified faculty members from this or other institutions of higher education.
- (13) The hearing committee will not be bound by strict rules of legal evidence, and may admit any evidence which is of probative value in determining the issues involved. Every possible effort will be made to obtain the most reliable evidence available.
- (14) The findings of fact and the decision will be based solely on the hearing record.
- (15) Except for such simple announcements as may be required, covering the time of the hearing and similar matters, public statements and publicity about the case by either the faculty member or administrative officers will be avoided so far as possible until the proceedings have been completed, including consideration by the governing board of the institution. The president and the faculty member will be notified of the decision in writing and will be given a copy of the record of the hearing.
- (16) If the hearing committee concludes that adequate cause for dismissal has not been established by the evidence in the record, it will so report to the president. If the president rejects the report, the president will state the reasons for doing so, in writing, to the hearing committee and to the faculty member, and provide an opportunity for response before transmitting the case to the governing board. If the hearing committee concludes that adequate cause for a dismissal has been established, but that an academic penalty less than dismissal would be

more appropriate, it will so recommend, with supporting reasons.

#### **6. ACTION BY THE GOVERNING BOARD**

If dismissal or other severe sanction is recommended, the president will, on request of the faculty member, transmit to the governing board the record of the case. The governing board's review will be based on the record of the committee hearing, and it will provide opportunity for argument, oral or written or both, by the principals at the hearings or by their representatives. The decision of the hearing committee will either be sustained or the proceeding returned to the committee with specific objections. The committee will then reconsider, taking into account the stated objections and receiving new evidence if necessary. The governing board will make a final decision only after study of the committee's reconsideration.

#### **7. PROCEDURES FOR IMPOSITION OF SANCTIONS OTHER THAN DISMISSAL**

- a. If the administration believes that the conduct of a faculty member, although not constituting adequate cause for dismissal, is sufficiently grave to justify imposition of a severe sanction, such as suspension from service for a stated period, the administration may institute a proceeding to impose such a severe sanction; the procedures outlined in Regulation 5 will govern such a proceeding.
- b. If the administration believes that the conduct of a faculty member justifies imposition of a minor sanction, such as a reprimand, it will notify the faculty member of the basis of the proposed sanction and provide the faculty member with an opportunity to persuade the administration that the proposed sanction should not be imposed. A faculty member who believes that a major sanction has been incorrectly imposed under this paragraph, or that a minor sanction has been unjustly imposed, may, pursuant to Regulation 16, petition the faculty grievance committee for such action as may be appropriate.

#### **8. TERMINAL SALARY OR NOTICE**

If the appointment is terminated, the faculty member will receive salary or notice in accordance with the following schedule: at least three months, if the final decision is reached by March 1 (or three months prior to the expiration) of the first year of probationary service; at least six months, if the decision is reached by December 15 of the second year (or after nine months but prior to eighteen

months) of probationary service; at least one year, if the decision is reached after eighteen months of probationary service or if the faculty member has tenure. This provision for terminal notice or salary need not apply in the event that there has been a finding that the conduct which justified dismissal involved moral turpitude. On the recommendation of the faculty hearing committee or the president, the governing board, in determining what, if any, payments will be made beyond the effective date of dismissal, may take into account the length and quality of service of the faculty member.

#### **9. ACADEMIC FREEDOM AND PROTECTION AGAINST DISCRIMINATION**

- a. All members of the faculty, whether tenured or not, are entitled to academic freedom as set forth in the *1940 Statement of Principles on Academic Freedom and Tenure*, formulated by the Association of American Colleges and Universities and the American Association of University Professors.
- b. All members of the faculty, whether tenured or not, are entitled to protection against illegal or unconstitutional discrimination by the institution, or discrimination on a basis not demonstrably related to the faculty member's professional performance, including but not limited to race, sex, religion, national origin, age, disability, marital status, or sexual orientation.

#### **10. COMPLAINTS OF VIOLATION OF ACADEMIC FREEDOM OR OF DISCRIMINATION IN NONREAPPOINTMENT**

If a faculty member on probationary or other nontenured appointment alleges that a decision against reappointment was based significantly on considerations that violate (a) academic freedom or (b) governing policies on making appointments without prejudice with respect to race, sex, religion, national origin, age, disability, marital status, or sexual orientation, the allegation will be given preliminary consideration by the [insert name of committee], which will seek to settle the matter by informal methods. The allegation will be accompanied by a statement that the faculty member agrees to the presentation, for the consideration of the faculty committee, of such reasons and evidence as the institution may allege in support of its decision. If the difficulty is unresolved at this stage, and if the committee so recommends, the matter will be heard in the manner set forth in Regulations 5 and 6, except that the faculty member making the complaint is responsible for stating the grounds upon which the allegations are based, and the burden of proof will rest upon the faculty member. If the faculty member

succeeds in establishing a prima facie case, it is incumbent upon those who made the decision against reappointment to come forward with evidence in support of their decision. Statistical evidence of improper discrimination may be used in establishing a prima facie case.

#### **11. ADMINISTRATIVE PERSONNEL**

The foregoing regulations apply to administrative personnel who hold academic rank, but only in their capacity as faculty members. Administrators who allege that a consideration that violates academic freedom, or governing policies against improper discrimination as stated in Regulation 10, significantly contributed to a decision to terminate their appointment to an administrative post, or not to reappoint them, are entitled to the procedures set forth in Regulation 10.

#### **12. POLITICAL ACTIVITIES OF FACULTY MEMBERS**

Faculty members, as citizens, are free to engage in political activities. Where necessary, leaves of absence may be given for the duration of an election campaign or a term of office, on timely application, and for a reasonable period of time. The terms of such leave of absence will be set forth in writing, and the leave will not affect unfavorably the tenure status of a faculty member, except that time spent on such leave will not count as probationary service unless otherwise agreed to.<sup>10</sup>

#### **13. Part-Time Faculty Appointments<sup>11</sup>**

- a. The terms and conditions of every appointment to a part-time nontenured faculty position will be stated in writing, including the length of service. A copy of the appointment document will be provided to the part-time faculty member.
- b. In a case of dismissal before the end of the period of appointment, the administration will set forth cause for the action and the faculty member will have the right to a hearing before a faculty committee.<sup>12</sup>
- c. In a case of nonreappointment, if a part-time faculty member establishes a prima facie case, to the satisfaction of a duly constituted faculty committee, that considerations that violate academic freedom or governing policies against improper discrimination significantly contributed to his or her nonretention, it is incumbent on those who made the decision to come forward with evidence in support of that decision.
- d. After having been reappointed beyond an initial term, a part-time faculty member who is subse-

quently notified of nonreappointment will be advised upon request of the reasons that contributed to the decision. Upon the faculty member's further request, the reasons will be confirmed in writing. The faculty member will be afforded opportunity for review of the decision by a faculty committee.

- e. For part-time faculty members who have served for three or more terms within a span of three years, the following additional protections of due process apply:
  - (1) Written notice of reappointment or nonreappointment will be issued no later than one month before the end of the existing appointment. If the notice of reappointment is to be conditioned, for example, on sufficiency of student enrollment or on financial considerations, the specific conditions will be stated with the issuance of the notice.
  - (2) If the faculty member notified of nonreappointment alleges that the decision was based significantly on considerations that violate academic freedom or governing policies against improper discrimination, the allegation will be subject to review in the manner set forth in Regulation 10.
  - (3) When the part-time faculty member is denied reappointment to an available assignment (one with substantially identical responsibilities assigned to another part-time faculty member with less service), if the nonreappointed faculty member alleges that the decision was based on inadequate consideration, the allegation will be subject to review by a faculty body. If this body, while not providing judgment on the merits of the decision, finds that the consideration has been inadequate in any substantial respects, it will remand the matter for further consideration accordingly.<sup>13</sup>
- f. Prior to consideration of reappointment beyond a seventh year, part-time faculty members who have taught at least twelve courses or six terms within those seven years shall be provided a comprehensive review with a view toward (1) appointment with part-time tenure where such exists, (2) appointment with part-time continuing service, or (3) nonreappointment. Those appointed with tenure shall be afforded the same procedural safeguards as full-time tenured faculty. Those offered additional appointment without tenure shall have

continuing appointments and shall not be replaced by part-time appointees with less service who are assigned substantially identical responsibilities without having been afforded the procedural safeguards associated with dismissal as set forth above in section b.

#### **14. GRADUATE STUDENT EMPLOYEES**

- a. The length, terms, and conditions of every university appointment of a graduate student employee will be stated in writing at the time of the initial appointment. A copy of the appointment document will be supplied to the appointee.<sup>14</sup>
- a. The graduate student employee on recurring appointments will be advised at the time of initial appointment of the substantive standards, expectations, and procedures generally employed at the institution in decisions affecting renewal, and of any special standards adopted by the graduate student employee's department or school. The graduate student employee will be advised of the time when decisions affecting renewals are made and will be given the opportunity to submit material believed to be helpful to an adequate consideration of his or her circumstances.
- c. In a case of dismissal before the end of the period of an academic or professional appointment the graduate student employee will be provided with a statement of reasons for the action, and will have the right to a pretermination hearing before a duly constituted committee. The hearing need not conform in all respects with a proceeding conducted pursuant to Regulation 5, but the essentials of an on-the-record adjudicative hearing will be observed. In such a hearing, the administration will have the burden of showing adequate cause for dismissal.<sup>15</sup> Adequate cause for a dismissal will be related, directly and substantially, to the fitness of the graduate student employee in his or her professional capacity regarding teaching, research, or other academic duties. Dismissal will not be used to restrain graduate student employees in their exercise of academic freedom or constitutional rights.
- d. Written notice of reappointment or nonreappointment will be issued to graduate student academic or professional employees no later than one month before the end of the existing appointment.
- e. Graduate student academic or professional employees who are notified of nonreappointment will be

advised upon request of the reasons that contributed to the decision. Upon the employee's further request, the reasons will be confirmed in writing. The employee will be afforded the opportunity for review of the decision by a duly constituted committee.

- f. In a case of nonreappointment, if a graduate student academic or professional employee establishes a prima facie case, to the satisfaction of a duly constituted committee, that considerations that violate academic freedom or governing policies against improper discrimination based on race, sex, national origin, age, disability, marital status, or sexual orientation significantly contributed to his or her nonretention, it is incumbent on those who made the decision to come forward with evidence in support of that decision.
- g. If a graduate student employee who is denied reappointment to an available academic or professional position alleges that the decision was based on inadequate consideration, the allegation will be subject to review by a duly constituted body.<sup>16</sup> If this body, while not providing judgment on the merits of the decision, finds that the consideration has been inadequate in any substantial respects, it will remand the matter, recommending to the department that it assess the merits once again, this time remedying the inadequacies of its prior consideration.<sup>17</sup>
- h. Graduate student academic or professional employees will have access to the faculty grievance committee, as specified in Regulation 16.

#### **15. OTHER ACADEMIC STAFF**

- a. In no case will a member of the academic staff who is not otherwise protected by the preceding regulations that relate to dismissal proceedings be dismissed without having been provided with a statement of reasons and an opportunity to be heard before a duly constituted committee.<sup>18</sup> (A dismissal is a termination before the end of the period of appointment.)
- b. With respect to the nonreappointment of a member of such academic staff who establishes a prima facie case to the satisfaction of a duly constituted committee that considerations that violate academic freedom, or of governing policies against improper discrimination as stated in Regulation 10, significantly contributed to the nonreappointment, the academic staff member will be given a statement of reasons by those responsible for the

nonreappointment and an opportunity to be heard by the committee.

## 16. GRIEVANCE PROCEDURE

If any faculty member alleges cause for grievance in any matter not covered by the procedures described in the foregoing regulations, the faculty member may petition the elected faculty grievance committee [here name the committee] for redress. The petition will set forth in detail the nature of the grievance and will state against whom the grievance is directed. It will contain any factual or other data that the petitioner deems pertinent to the case. Statistical evidence of improper discrimination, including discrimination in salary, may be used in establishing a prima facie case. The committee will decide whether or not the facts merit a detailed investigation; if the faculty member succeeds in establishing a prima facie case, it is incumbent upon those who made the decision to come forward with evidence in support of their decision. Submission of a petition will not automatically entail investigation or detailed consideration thereof. The committee may seek to bring about a settlement of the issue(s) satisfactory to the parties. If in the opinion of the committee such a settlement is not possible or is not appropriate, the committee will report its findings and recommendations to the petitioner and to the appropriate administrative officer and faculty body, and the petitioner will, upon request, be provided an opportunity to present the grievance to them. The grievance committee will consist of three [or some other number] elected members of the faculty. No officer of administration will serve on the committee.

### Note on Implementation

The *Recommended Institutional Regulations* here presented will require for their implementation a number of structural arrangements and agencies. For example, the *Regulations* will need support by:

1. channels of communication among all the involved components of the institution, and between them and a concerned faculty member;
2. definitions of corporate and individual faculty status within the college or university government, and of the role of the faculty in decisions relating to academic freedom and tenure; and
3. appropriate procedures for the creation and operation of faculty committees, with particular regard to the principles of faculty authority and responsibility.

The forms which these supporting elements assume will of course vary from one institution to another. Consequently, no detailed description of the elements is attempted in these *Recommended Institutional Regulations*. With respect to the principles involved, guidance will be found in the Association's 1966 *Statement on Government of Colleges and Universities*. ■

### Notes

1. Under the 1940 "Statement of Principles on Academic Freedom and Tenure," this period may not exceed seven years. However, the Association's 2001 "Statement of Principles on Family Responsibilities and Academic Work" (AAUP, *Policy Documents and Reports*, 10th ed. [Washington, D.C., 2006], 219–26) provides that "a faculty member be entitled to stop the clock or extend the probationary period, with or without taking a full or partial leave of absence, if the faculty member (whether male or female) is a primary coequal caregiver of newborn or newly adopted children," that "institutions allow the tenure clock to be stopped for up to one year for each child, and . . . that faculty be allowed to stop the clock only twice, resulting in no more than two one-year extensions of the probationary period."

2. The exception here noted applies only to an institution where the maximum probationary period exceeds four years.

3. April 15 is the recommended date.

4. This committee, which can be the grievance committee noted in Regulation 16, is to be an elected faculty body. Similarly, the members of the committees noted in Regulations 4c(2), 4d(3), 10, 13, and 14 are to be elected. A committee of faculty members appointed by an appropriate elected faculty body can substitute for a committee that is elected directly.

5. See "The Role of the Faculty in Budgetary and Salary Matters," *Policy Documents and Reports*, 149–52, especially the following passages:

The 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. . . .

Circumstances of financial exigency obviously pose special problems. At institutions experiencing major

threats to their continued financial support, the faculty should be informed as early and specifically as possible of significant impending financial difficulties. The faculty—with substantial representation from its nontenured as well as its tenured members, since it is the former who are likely to bear the brunt of the reduction—should participate at the department, college or professional school, and institution-wide levels in key decisions as to the future of the institution and of specific academic programs within the institution. The faculty, employing accepted standards of due process, should assume primary responsibility for determining the status of individual faculty members.

6. See “Statement on Government of Colleges and Universities,” *Policy Documents and Reports*, 135–40, especially the following passage:

Faculty status and related matters are primarily a faculty responsibility; this area includes appointments, reappointments, decisions not to reappoint, promotions, the granting of tenure, and dismissal. The primary responsibility of the faculty for such matters is based upon the fact that its judgment is central to general educational policy.

7. When discontinuance of a program or department is mandated by financial exigency of the institution, the standards of Regulation 4c above will apply.

8. This committee should not be the same as the committee referred to in Regulation 5b(2).

9. Regulations of the institution should provide for alternates, or for some other method of filling vacancies on the hearing committee resulting from disqualification, challenge without stated cause, illness, resignation, or other reason.

10. See “Statement on Professors and Political Activity,” *Policy Documents and Reports*, 33–34.

11. This regulation does not apply to faculty members with reduced loads who are tenured or probationary for tenure and who have the protections of due process that are provided in Regulations 2, 4, 5, 6, 7, and 8. It does apply to all other faculty members whose appointments are less than full time, whatever their rank or title and whether they are paid on a pro-rata, a per-course, or any other basis.

12. As stated in Regulation 5a, “Adequate cause for a dismissal will be related, directly and substantially, to the fitness of faculty members in their professional capacities as teachers or researchers. Dismissal will not be used to restrain faculty members in their exercise of academic freedom or other rights of American citizens.”

13. See “Statement on Procedural Standards in the Renewal or Nonrenewal of Faculty Appointments” (*Policy Documents and Reports*, 16–21), especially the following passages:

It is easier to state what the standard “adequate consideration” does not mean than to specify in detail what it

does. It does not mean that the review committee should substitute its own judgment for that of members of the department on the merits of whether the candidate should be reappointed or given tenure. The conscientious judgment of the candidate’s departmental colleagues must prevail if the invaluable tradition of departmental autonomy in professional judgments is to prevail. The term “adequate consideration” refers essentially to procedural rather than to substantive issues: Was the decision conscientiously arrived at? Was all available evidence bearing on the relevant performance of the candidate sought out and considered? Was there adequate deliberation by the department over the import of the evidence in the light of the relevant standards? Were irrelevant and improper standards excluded from consideration? Was the decision a bona fide exercise of professional academic judgment? These are the kinds of questions suggested by the standard “adequate consideration.”

If, in applying this standard, the review committee concludes that adequate consideration was not given, its appropriate response should be to recommend to the department that it assess the merits once again, this time remedying the inadequacies of its prior consideration.

14. Universities assume responsibilities when they accept graduate students with a promise of financial support. Graduate student employees have a legitimate expectation of fulfillment of the promise unless legitimate cause to terminate support is shown. If the cause relates to the graduate student employee’s work and/or academic performance or progress, the employee should be given sufficient time and opportunity to redress the concern.

15. According to the Association’s *Statement on Collective Bargaining*, “Participation in a strike or other work action does not by itself constitute grounds for dismissal or nonreappointment or for imposing other sanctions against faculty members.”

16. For comment on the term “adequate consideration,” see Footnote 13, *supra*.

17. Nonreappointment conditioned on inadequate academic performance as a graduate student may be reviewed in the manner provided in Committee A’s statement on “The Assignment of Course Grades and Student Appeals,” *Policy Documents and Reports*, 127,8.

18. Each institution should define with particularity who are members of the academic staff.

# 1958 Statement on Procedural Standards in Faculty Dismissal Proceedings

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*The following statement was prepared by a joint committee representing the Association of American Colleges (now the Association of American Colleges and Universities) and the American Association of University Professors and was approved by these two associations at their annual meetings in 1958. It supplements the 1940 Statement of Principles on Academic Freedom and Tenure by providing a formulation of the "academic due process" that should be observed in dismissal proceedings. The exact procedural standards here set forth, however, "are not intended to establish a norm in the same manner as the 1940 Statement of Principles on Academic Freedom and Tenure, but are presented rather as a guide...."*

*The governing bodies of the American Association of University Professors and the Association of American Colleges, meeting respectively in November 1989 and January 1990, adopted several changes in language in order to remove gender-specific references from the original text.*

## **Introductory Comments**

Any approach toward settling the difficulties which have beset dismissal proceedings on many American campuses must look beyond procedure into setting and cause. A dismissal proceeding is a symptom of failure; no amount of use of removal process will help strengthen higher education as much as will the cultivation of conditions in which dismissals rarely, if ever, need occur.

Just as the board of control or other governing body is the legal and fiscal corporation of the college, the faculty is the academic entity. Historically, the academic corporation is the older. Faculties were formed in the Middle Ages, with managerial affairs either self-arranged or handled in course by the parent church. Modern college faculties, on the other hand, are part of a complex and extensive structure requiring legal incorporation, with stewards and managers specifically appointed to discharge certain functions.

Nonetheless, the faculty of a modern college constitutes an entity as real as that of the faculties of medieval times, in terms of collective purpose and function. A necessary precondition of a strong faculty is that it have first-hand concern with its own membership. This is properly reflected both in appointments to and in separations from the faculty body.

A well-organized institution will reflect sympathetic understanding by trustees and teachers alike of their respective and complementary roles. These should be spelled out carefully in writing and made available to all. Trustees and faculty should understand and agree on their several functions in determining who shall join and who shall remain on the faculty. One of the prime duties of the administrator is to help preserve understanding of those functions. It seems clear on the American college scene that a close positive relationship exists between the excellence of colleges, the strength of their faculties, and the extent of faculty responsibility in determining faculty membership. Such a condition is in no way inconsistent with full faculty awareness of institutional factors with which governing boards must be primarily concerned.

In the effective college, a dismissal proceeding involving a faculty member on tenure, or one occurring during the term of an appointment, will be a rare exception, caused by individual human weakness and not by an unhealthful setting. When it does come, however, the college should be prepared for it, so that both institutional integrity and individual human rights may be preserved during the process of resolving the trouble. The faculty must be willing to recommend the dismissal of a colleague when necessary. By the same token, presidents and governing boards must be willing to give full weight to a faculty judgment favorable to a colleague.

One persistent source of difficulty is the definition of adequate cause for the dismissal of a faculty member. Despite the 1940 *Statement of Principles on Academic Freedom and Tenure* and subsequent attempts to build upon it, considerable ambiguity and misunderstanding persist throughout higher education, especially in the respective conceptions of governing boards, administrative officers, and faculties concerning this matter. The present statement assumes that individual institutions will have formulated their own definitions of adequate cause for dismissal, bearing in mind the 1940 *Statement* and standards that have developed in the experience of academic institutions.

This statement deals with procedural standards. Those recommended are not intended to establish a norm in the same manner as the 1940 *Statement of Principles on Academic Freedom and Tenure*, but are presented rather as a guide to be used according to the nature and traditions of particular institutions in giving effect to both faculty tenure rights and the obligations of faculty members in the academic community.

### **Procedural Recommendations**

1. *Preliminary Proceedings Concerning the Fitness of a Faculty Member.* When reasons arise to question the fitness of a college or university faculty member who has tenure or whose term appointment has not expired, the appropriate administrative officers should ordinarily discuss the matter with the faculty member in personal conference. The matter may be terminated by mutual consent at this point; but if an adjustment does not result, a standing or ad hoc committee elected by the faculty and charged with the function of rendering confidential advice in such situations should informally inquire into the situation, to effect an adjustment, if possible, and, if none is effected, to determine whether in its view formal proceedings to consider the faculty member's dismissal should be instituted. If the committee recommends that such proceedings should be begun, or if the president of the institution, even after considering a recommendation of the committee favorable to the faculty member, expresses the conviction that a proceeding should be undertaken, action should be commenced under the procedures that follow. Except where there is disagreement, a statement with reasonable particularity of the grounds proposed for the dismissal should then be jointly formulated by the president and the faculty committee; if there is disagreement, the president or the president's representative should formulate the statement.
2. *Commencement of Formal Proceedings.* The formal proceedings should be commenced by a communication addressed to the faculty member by the president of the institution, informing the faculty member of the statement formulated, and also informing the faculty member that, at the faculty member's request, a hearing will be conducted by a faculty committee at a specified time and place to determine whether he or she should be removed from the faculty position on the grounds stated. In setting the date of the hearing, sufficient time should be allowed the faculty member to prepare a defense. The faculty member should be informed, in detail or by reference to published regulations, of the procedural rights that will be accorded. The faculty member should state in reply whether he or she wishes a hearing, and, if so, should answer in writing, not less than one week before the date set for the hearing, the statements in the president's letter.
3. *Suspension of the Faculty Member.* Suspension of the faculty member during the proceedings is justified only if immediate harm to the faculty member or others is threatened by the faculty member's continuance. Unless legal considerations forbid, any such suspension should be with pay.
4. *Hearing Committee.* The committee of faculty members to conduct the hearing and reach a decision should be either an elected standing committee not previously concerned with the case or a committee established as soon as possible after the president's letter to the faculty member has been sent. The choice of members of the hearing committee should be on the basis of their objectivity and competence and of the regard in which they are held in the academic community. The committee should elect its own chair.

5. *Committee Proceeding.* The committee should proceed by considering the statement of grounds for dismissal already formulated, and the faculty member's response written before the time of the hearing. If the faculty member has not requested a hearing, the committee should consider the case on the basis of the obtainable information and decide whether the faculty member should be removed; otherwise, the hearing should go forward. The committee, in consultation with the president and the faculty member, should exercise its judgment as to whether the hearing should be public or private. If any facts are in dispute, the testimony of witnesses and other evidence concerning the matters set forth in the president's letter to the faculty member should be received.

The president should have the option of attendance during the hearing. The president may designate an appropriate representative to assist in developing the case; but the committee should determine the order of proof, should normally conduct the questioning of witnesses, and, if necessary, should secure the presentation of evidence important to the case.

The faculty member should have the option of assistance by counsel, whose functions should be similar to those of the representative chosen by the president. The faculty member should have the additional procedural rights set forth in the 1940 *Statement of Principles on Academic Freedom and Tenure*, and should have the aid of the committee, when needed, in securing the attendance of witnesses. The faculty member or the faculty member's counsel and the representative designated by the president should have the right, within reasonable limits, to question all witnesses who testify orally. The faculty member should have the opportunity to be confronted by all adverse witnesses. Where unusual and urgent reasons move the hearing committee to withhold this right, or where the witness cannot appear, the identity of the witness, as well as the statements of the witness, should nevertheless be disclosed to the faculty member. Subject to these safeguards, statements may, when necessary, be taken outside the hearing and reported to it. All of the evidence should be duly recorded. Unless special circumstances warrant, it should not be necessary to follow formal rules of court procedure.

6. *Consideration by Hearing Committee.* The committee should reach its decision in conference, on the basis of the hearing. Before doing so, it should give opportunity to the faculty member or the faculty member's counsel and the representative designated by the president to argue orally before it. If written briefs would be helpful, the committee may request them. The committee may proceed to decision promptly, without having the record of the hearing transcribed, where it feels that a just decision can be reached by this means; or it may await the availability of a transcript of the hearing if its decision would be aided thereby. It should make explicit findings with respect to each of the grounds of removal presented, and a reasoned opinion may be desirable. Publicity concerning the committee's decision may properly be withheld until consideration has been given to the case by the governing body of the institution. The president and the faculty member should be notified of the decision in writing and should be given a copy of the record of the hearing. Any release to the public should be made through the president's office.
7. *Consideration by Governing Body.* The president should transmit to the governing body the full report of the hearing committee, stating its action. On the assumption that the governing board has accepted the principle of the faculty hearing committee, acceptance of the committee's decision would normally be expected. If the governing body chooses to review the case, its review should be based on the record of the previous hearing, accompanied by opportunity for argument, oral or written or both, by the principals at the hearing or their representatives. The decision of the hearing committee should either be sustained or the proceeding be returned to the committee with objections specified. In such a case the committee should reconsider, taking account of the stated objections and receiving new evidence if necessary. It should frame its decision and communicate it in the same manner as before. Only after study of the committee's reconsideration should the governing body make a final decision overruling the committee.

8. *Publicity.* Except for such simple announcements as may be required, covering the time of the hearing and similar matters, public statements about the case by either the faculty member or administrative officers should be avoided so far as possible until the proceedings have been completed. Announcement of the final decision should include a statement of the hearing committee's original action, if this has not previously been made known.



## The Use and Abuse of Faculty Suspensions

*The report that follows was prepared by a subcommittee of Committee A on Academic Freedom and Tenure. An initial draft of the report was reviewed by the committee at its June 2008 meeting, and the chair of the subcommittee revised the draft in the light of suggestions by committee members. The revised text was approved for publication in August 2008.*

*Comments are welcome and should be sent to the Association's Washington office.*

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### I. Background

This subcommittee was charged with reviewing and analyzing the large number of AAUP cases and complaints involving suspension from teaching or research as a sanction imposed on faculty members, and the additional sanction of expulsion or banishment from the entire campus or from certain areas and activities. Although the suspension of a faculty member from some or all duties is not a new phenomenon, it has been increasingly common in recent years; and although Association policy severely limits its use, it appears to have become almost a routine recourse for administrations seeking to discipline faculty members regardless of the seriousness of the alleged cause. The subcommittee has reviewed the development of Association policy since the issuance of the 1940 *Statement of Principles on Academic Freedom and Tenure*, some forty published Committee A reports (cited at the end of this document), a limited number of university task-force reports that examined the use of suspension, and other available material.<sup>1</sup>

Suspension has been defined in different ways both in institutional regulations and by administrations at the time the penalty is imposed on the faculty member. Sometimes, as we will show, administrators decline to use the term and claim that in fact what they are imposing is not a suspension at all. An examination of some of these claims will be useful in restating the central tenets of Association policy. In addition, suspension has sometimes been employed as a sanction independent of dismissal, here termed "freestanding" suspension (see Section IV).

Historically, suspension has been regarded in Association policy as a severe sanction second only to dismissal, because it has been seen primarily in terms of removal of a faculty member from teaching. As one case report put it, "Barring a teacher from his classroom inflicts ignominy upon the teacher and is destructive to the morale of the academic community."<sup>2</sup> An eloquent statement on the adverse effects of suspension, one that has been cited in several subsequent Committee A investigations, was the finding of the investigating committee in the 1966 case of St. John's University:

The profession's entire case for academic freedom and its attendant standards is predicated upon the basic right to employ one's professional skills in practice, a right, in the case of the teaching profession, which is exercised not in private practice but through institutions. To deny a faculty member this opportunity without adequate cause, regardless of monetary compensation, is to deny him his basic professional rights. Moreover, to a good teacher, to be involuntarily idle is a serious harm in itself. One has only to think of the famous teachers of the past, beginning with Socrates, to realize what a serious injury it would have been to these men to have been denied the right to teach. In the case of the teachers at St. John's, denial of their classrooms was, in itself, serious injury. To inflict such injury without due process and, therefore, without demonstrated reason, destroys the academic character of the University.<sup>3</sup>

In the forty-two years since the publication of the St. John's report, removal from teaching duties is not necessarily the primary or relevant issue in all cases of suspension. The reason for this is that the increasing complexity of faculty work has come to include many more duties than teaching. The more duties a faculty member has, the more there are to suspend him or her from. Moreover, the greater the influence of campus legal counsel in protecting the university from liability, the more reasons can be found for imposing a suspension. As researchers, for example, faculty members often have relationships beyond their institutions that could be compromised by suspension. The relationship of researchers to outside funding agencies, both public and private (including corporate sponsors), is increasingly complicated (some might say vexed) by stringent reporting requirements and restraints posed by the need to avoid conflict of interest. E-mail and computing services, the first of these entirely unknown in 1966 and the second still in a relatively primitive form, now are

essential components of almost any aspect of faculty work. Faculty research in the sciences funds graduate student positions or involves access to and oversight of a laboratory that by the nature of the project may be subject to federal and state regulations dealing with such questions as biohazards or animal care. In addition, today's workplace protections against sexual harassment and provisions for the disabled were never envisioned by the formulators of the 1940 *Statement*, let alone the 1915 *Declaration of Principles on Academic Freedom and Academic Tenure*.

It is not surprising under these circumstances that increasingly the Association is dealing with cases that involve partial suspensions, in which the faculty member is blocked from some duties or locations, but not others. The placing of physical constraints short of entire banishment from campus through denial of access to a library, computer center, or e-mail seriously impedes faculty work. That work can be even more seriously affected when the faculty member is barred from his or her office, studio, or laboratory even when not barred from setting foot on the entire campus. Removal from even a single class can, of course, pose serious complications for the faculty member's standing as a teacher.

Whether a suspension is partial or total, whether or not it is accompanied by expulsion or banishment from the campus, in many cases administrations, often acting on advice of their legal counsel, do not seem, or care, to grasp the severe effects that suspension can have, not only on the reputation—and morale—of an accused faculty member, but also on his or her ability to contest the intended sanction. Suspension usually implies an extremely negative judgment, for which the basis remains untested in the absence of a hearing, even though an administration may claim that it is saving the faculty member embarrassment. That potential embarrassment must be risked (or at least the faculty member should be permitted to risk it) if the individual is to have a chance of clearing his or her name.<sup>4</sup> Beyond that, suspension may create a prejudicial atmosphere totally out of proportion to the alleged offense and undeserved in the light of the professor's previous record (see the 1970 report on the case at Alfred University). We pursue some further examples of this in Section V below.

## II. The Development of Association Policy

The 1940 *Statement of Principles* is silent on the question of suspension, but the St. John's investigating committee found it "reasonable to construe" the statement "as applying to suspension from all academic duties," since such an action is "tantamount to summary dismissal within the meaning of the statement." Association policy on suspension derives explicitly from recommendation number 3 of the joint 1958 *Statement on Procedural Standards in Faculty Dismissal Proceedings*: "Suspension of the faculty member during [dismissal] proceedings is justified only if immediate harm to the faculty member or others is threatened by the faculty member's continuance. Unless legal considerations forbid, any such suspension should be with pay." The 1970 *Interpretive Comments* on the 1940 *Statement* added that "[a] suspension which is not followed by either reinstatement or the opportunity for a hearing is in effect a summary dismissal in violation of academic due process."

The fullest expansion of these points, which links suspension to a subsequent dismissal proceeding, is found in the *Recommended Institutional Regulations on Academic Freedom and Tenure* (1968 and subsequent revisions, hereafter cited as *RIR*), section 5c(1):

Pending a final decision by the hearing committee, the faculty member will be *suspended or assigned to other duties in lieu of suspension, only if immediate harm* to the faculty member or others is threatened by continuance. Before suspending a faculty member, pending an ultimate determination of the faculty member's status through the institution's hearing procedures, the administration will consult with the Faculty Committee on Academic Freedom and Tenure [or whatever other title it may have] concerning the propriety, the length, and the other conditions of the suspension. A suspension that is intended to be final is a dismissal and will be treated as such. Salary will continue during the period of the suspension. (Emphasis added.)

The 1971 *Report of the Joint Committee on Faculty Responsibility*, the Association's first extensive discussion of sanctions short of dismissal, listed eight such sanctions in ascending order of severity, of which the eighth, "suspension from service for a stated period, without other prejudice," is the most severe.<sup>5</sup> "If the alleged offense is believed serious enough to warrant suspension without pay for a stated period, it is clear that a considerable measure of academic due process must be provided (for example, informal conference, screening committee, written statement of charges, regularized faculty committee, complete transcript, right to counsel, right of cross examination, etc.)"<sup>6</sup> As a result of this report, *RIR 7a* was added in 1971, providing (in language much more exacting than the report) for suspension as a sanction separate from dismissal but requiring the same standard of due process:

If the administration believes that the conduct of a faculty member, although not constituting adequate cause for dismissal, is sufficiently grave to justify imposition of a severe sanction such as *suspension from service for a stated period*, the administration may institute a proceeding to impose such a severe sanction; the procedures outlined in Regulation 5 [governing dismissals] will govern such a proceeding. (Emphasis added.)

In short, the development of Association policy originally saw suspension as preceding potential dismissal; after 1971 it also recognized the possible levying of suspension as a freestanding sanction. The first of these types of suspension occupies the bulk of the cases we survey here, and can be broadly classified either as a *prehearing* suspension, in which suspension with pay is imposed until a dismissal hearing can be held, or a *pretermination* suspension, in which suspension, albeit not a freestanding sanction, is levied without any commitment to holding a formal dismissal hearing and /may indeed be regarded as self-sufficient for the institution's purposes, leading to termination immediately or at the end of the faculty member's term of appointment. In either case, however, depending on the circumstances (including indefinite and nondefinitive suspension prolonged over several academic terms), such an action may be seen as tantamount to a dismissal for cause, as will be repeated several times in this report.

It is also important to distinguish at the outset between suspension actions taken for stated cause and those taken for reasons of physical or mental disability. *RIR* 4e stipulates that an action to terminate an appointment on these latter grounds should be taken on the basis of "clear and convincing medical evidence that the faculty member, even with reasonable accommodation, is no longer able to perform the essential duties of the position." Such considerations could figure likewise in a suspension decision, although there the fact that suspension, rather than termination, is contemplated would imply that such a condition is, or at least may be, temporary and remediable. As will be seen, at least one suspension case that we reviewed included allegations that the faculty member's irrational or emotional behavior was evidence of mental or emotional instability and justified suspension from assigned duties for the faculty member's own good.

### III. Definitional Issues in Association Policy and Case History

Four key definitional issues underlie *RIR* 5c(1), and in this section the subcommittee treats them in the order in which they are treated in that regulation.

#### A. The Meaning of Suspension

As we have said, removal from classroom or laboratory duties has been at the core of the development of Association policy and case reports, although suspension in a broader context is understood to figure, and usually has figured, in such cases. The report of the investigating committee on St. John's University pointed out that removal from teaching is the severest of sanctions, whether resulting from dismissal or from potentially temporary suspension. This position is unequivocally restated in the 1995 report of the investigating committee concerning a nonreappointment case at the University of Southern California, which argued that the mere continuance of the faculty member in some duties did not negate the underlying fact of suspension:

Suspending a faculty member is a very serious sanction. The provision on suspension in the USC Faculty Handbook [which tied suspension only to the initiation of dismissal proceedings, like earlier AAUP policy, and which invoked the standard of "immediate harm"] is plainly intended to make suspension difficult. If assignment to some duty, however trivial, were to mark faculty members as not suspended, accomplishing the purpose for which an administration might wish to suspend a faculty member would be easy. The threat to academic freedom of interpreting suspension in this way is obvious.

The investigating committee went on to say that even at a research university, where research may carry as much weight as teaching, "suspending [faculty members] from teaching is suspending them, and the committee believes that the term is so understood by faculty members across the country, whether at research universities or at institutions engaged primarily in teaching." Additionally, if the reason alleged for suspension is the best interest of the students, such an action is "a devastating indictment of a faculty member. Its impact is no less devastating if the faculty member continues to be assigned nonteaching duties."<sup>7</sup>

The italicized language in the following quotations from Association policy seems somewhat less emphatic, and could conceivably lead to confusion. Thus *RIR* 5c(1) describes the faculty member as "*suspended or assigned to other duties in lieu of suspension*," which might seem to imply that suspension from classroom duties is not really a suspension—or tantamount to dismissal—if other duties, either preexisting or newly imposed, are still expected.<sup>8</sup> *RIR* 7a and the Association's 1971 joint subcommittee report on faculty responsibility both speak of *suspension from service*, which seems to imply, on the contrary, that suspension involves all aspects of the faculty member's duties. In some cases, however, administrators appear to have seized on circumstances that they believe render the designation "suspension" moot, not least because if the administration's action is not really suspension, the level of due process need not accord with Association-supported standards or indeed, sometimes, with the standards set forth in the institution's own stated regulations (see the USC case just discussed).

Resistance to calling the action a suspension can be particularly prevalent in cases that involve continued payment of salary to the faculty member during the period of suspension, as if the mere fact of pay were sufficient to absolve the administration of impropriety, but it is also the case in reassignments when the faculty member is removed from the classroom.<sup>9</sup> The USC report is equally relevant on this point.

In that case a nontenured faculty member in her penultimate year of probationary service was issued notice of nonreappointment followed by suspension from her teaching duties in the fall semester of the terminal year. Because she had been given a research leave for the spring term, a commitment that was honored, the effect of the suspension was that she would no longer teach at all. The administration argued to the Association that nonassignment of courses in the fall was not suspension, despite the fact that the courses had been assigned to her but then withdrawn. Furthermore, the professor was told that the action “was made in the interest of the students and is not designed to affect any of your other duties and responsibilities.” The investigating committee observed that since it could find no reason why permitting the faculty member to teach would be against the interest of the students, other than what had served as grounds for her nonreappointment, it seemed unacceptable “that the grounds for nonreappointment had come by May to be seen by the University of Southern California administration as grounds . . . also for suspending [the professor] from teaching.”<sup>10</sup>

Despite the changes in academic work that we have noted, suspension still probably continues to be understood, especially by the public, primarily to mean suspension from teaching. Under no circumstances, however, does an assignment to other duties alter the fact that the faculty member has been suspended, unless the consent of the faculty member to the reassignment pending a hearing has been sought and granted. Nor does the continuation of the faculty member in other ongoing activities, such as committee service, alter that fact. Still, the apparent discordance or inconsistency between *RIR* 5c(1) and 7a needs to be resolved. Finally, and fittingly in terms of what we have said about the altered character of faculty duties, the term “suspension” may be equally appropriate in the case of a faculty member who does little or no teaching but who is removed from those duties that are directly related to his or her professional fitness, for example, the director of a research institute or a librarian.<sup>11</sup>

## B. Immediate Harm

*RIR* 5c(1) speaks of the threat of immediate harm to oneself or others as a precondition to suspending a faculty member. But unlike suspension, which is capable of legislative definition, “immediate harm” is a much more problematic, if not elusive, concept; administrations that have invoked it as a justification for suspension have given it what, to say the least, are very broad interpretations.

In many of the cases we have reviewed, the administration did not attempt to justify a prehearing or pretermination suspension on the basis of “immediate harm.” In one case, the reason for suspension was the distribution of an essay as required reading in an advanced writing course, an essay that the president found offensive. The professor was subsequently reinstated with “a censure for poor judgment in this instance.”<sup>12</sup> Where some mention of the concept, if not the exact term, occurred, it was frequently attached to vague, trivial, or even faintly comical charges: “inefficiency,” “neglect of academic duty,” holding students or colleagues up for public contempt, and the authorship of two anonymous letters critical of the president; “teaching deficiencies” that were “harmful to the institution” and to “the immature and impressionable minds of undergraduates”; “employing an attorney and contemplating litigation”; the distribution of a satire of a required fall faculty workshop as well as the conduct of a course in social processes that students claimed would require them to undertake projects that might lead to their arrest if they were to get good grades; and both the giving of advice to students to go to other colleges and the fact of declining enrollments in the faculty member’s discipline.<sup>13</sup> In this last case, “When the investigating committee pointed out to [the president] that the standard implies more direct and tangible harm, he suggested that [the faculty member’s] emotional condition posed possible harm to students and faculty.”<sup>14</sup> Elsewhere, three dismissed faculty members notified of suspension with pay were charged with “repeated disregard for institutional objectives, policies, and/or authority.” They were told that their “continued and repeated conduct constitutes a continual threat to the operation of the college as well as a threat to the board of regents in their statutory authority.”<sup>15</sup> One suspension was based on a reference in the college handbook to the need to uphold the institution’s “good name and reputation,” which in the words of the investigating committee was “so loose and so open to differing interpretations as to be nearly meaningless. It could be used to justify the suspension of members of the faculty who say or do anything of which the administration does not approve.”<sup>16</sup>

Whether or not recourse to suspension may in some cases be necessary under circumstances that involve immediate harm to a faculty member or others, it is clear that none of the foregoing charges could be construed as involving immediate harm in the rigorous sense that Association-recommended policy implies. If, in predismittal cases, there is no invocation, let alone evidence, of immediate harm, there should be no suspension to begin with.

More revealing are two cases in which the definition of immediate harm has been a matter of dispute between the Association and the administration of a particular institution. At St. Mary’s College in California, a notice of nonreappointment was followed by termination of the affected individual’s services in the same month, with the balance of the faculty member’s salary paid up front and his benefits continued to the end of the term. The administration alleged that the faculty member’s continuation in the classroom would have been prejudicial because of “past teaching performance and what seems to be unprofessional conduct with regard to some students and his department. Harm to other faculty members is quite apparent.” To this allegation the administration added the purely prudential argument

that the professor's continuance in required courses in his discipline would jeopardize student enrollments. In answer to an inquiry from the Association's staff, the president wrote, "Although you feel that 'harm' means physical injury, I feel that your definition is too narrow and unrealistic. St. Mary's College is a very small institution, and as a result the impact of continuing [the faculty member] as a teacher is more serious than it would be in the case of a large college."<sup>17</sup> The Association would not ordinarily consider institutional size in itself as a standard for determining whether or not the claim of "immediate harm" is justified, although, as we note later, a small campus may indeed offer unique opportunities for an administration to shame a faculty member.

In another case (Armstrong State College), the faculty member was suspended for having copies of an underground newspaper at his home to which minors (none of them students at the college) might have had access, a situation that also led to his arrest under a criminal warrant. The dean's position in the case was that "a proper professional relationship may become endangered during such time as a professional person is under legal charge of criminal action." The president insisted in a letter to the Association that the term "immediate harm" "could and should include psychological, mental, and most of all *educational harm*. We actually had all of these involved inasmuch as very high feeling resulted from this situation." (Emphasis in original.) The investigating committee responded that the president's definition was unacceptable, and it found no evidence of even the broadly construed forms of harm he had adduced. The committee noted that during his suspension the professor was permitted "to continue to advise students in his office, and he did so on a number of occasions. It is difficult to appreciate how [the faculty member] might have represented immediate psychological or educational danger to twenty-five students in a group while not posing such danger when dealing with them individually or in groups of two or three."<sup>18</sup>

The problem is not only how to delimit the concept of "immediate harm," but also what is meant by "others." Who and what are these others? Are they living, breathing human beings, or are they abstractions referring to institutional self-interest or administrative dignity? It is relatively easy to establish what immediate harm is not, as our examples, ranging from the risible to the sinister, testify. At least one investigating committee, however, has offered suggestions on what it might be: namely, disruption of, or the encouragement of anyone else to disrupt or otherwise impede, another individual's performance of university duties; making it difficult for the university to administer any of its programs or facilities; or using the classroom to espouse, gratuitously and irrelevantly, any views relating to the political and religious causes and controversies to which the faculty member is committed outside the classroom.<sup>19</sup> A quite different kind of case might be one in which a qualified medical opinion was obtained that actual physical danger to self and others existed when a faculty member had been behaving irrationally, was making serious threats against others on campus, and was known to have access to weapons. The large majority of the AAUP's published case reports seem to concur with the point that "harm" is meant to be understood as physical (a 2003 investigating committee report on the University of South Florida suggests that harm could include the physical obstruction of the orderly conduct of academic business), and they all agree that "others" refers to people and not to institutional reputation, the general good of the institution, or fears of hypothetical developments such as the fear of litigation that an investigating committee thought might have figured in another case.<sup>20</sup> The concept of immediate harm is inextricably bound up with the gravity of the charges, and the grounds for suspension should therefore be as stringent as those for dismissal. A perceived emergency tends too often to set the stage for a suspension, not only of the faculty member, but also of academic due process itself.

This being said, however, it seems unrealistic to confine the justification for suspensions exclusively to a narrow concept of "physical harm." A more mundane reason for suspension might be a legitimate fear that a disaffected faculty member is impairing the ability of his or her colleagues to carry out their business, for example, by being repeatedly disruptive in department meetings, making it impossible to carry out the work of the department. A professor's inability to handle a chaotic classroom situation might also raise concerns about immediate harm to the students in that class. Or there might be good reason for concluding that a researcher's handling of grant money is so irresponsible as to jeopardize continuance of the grant. In such cases the harm done by the faculty member may be real and immediate, but not physically threatening. Still, it needs to be emphasized that suspension from duties for these kinds of reasons also requires the affordance of academic due process to the accused faculty member.

We outline three cases that seem to us among the better illustrations of the complexities of the "immediate-harm" standard: Indiana State University; Queensborough Community College, City University of New York; and the University of South Florida.

At Indiana State University, the administration believed that the suspension of a faculty member was justified by the fear of violence from the surrounding community. An English professor had burned a small American flag in the classroom in order, he explained, to make clear to students the difference between symbolic action and destruction of a concrete object. The ground for the suspension was "unprofessional conduct" that had "impaired the value of your potential contribution to ISU." The president's statement to the faculty at large indicated that the suspension was based on concern for the safety of the faculty member, and he cited the joint 1958 *Statement* for support. Despite ample evidence in the hearing record that news of the professor's action had spread quickly and might well have created a threat off campus, the investigating committee found that "these threats from the public were not prevented by immediately denying [the professor] access to his classes."<sup>21</sup> The administration apparently chose not to avail itself of the argument that the professor's presence

on campus might have invited violence onto the campus from the external community, and the question remains open whether in such instances a duly constituted faculty committee might have been persuaded to that effect by the expert testimony of security officers and local police. In such a case, a suspension might appropriately be warranted under the immediate-harm standard, but only on grounds of the harm itself, not of its pertinency to the faculty member's fitness to pursue his duties. Any such suspension should have been rescinded at the earliest possible opportunity consistent with safety; a determination of professional unfitness would require a hearing of record before an appropriate faculty body.

At Queensborough Community College, three faculty members participated in sit-ins called by students to object to the nonreappointment of one of the three. The administration charged the three with "outrageously unprofessional conduct" as part of an initial attempt to dismiss them, but no evidence of immediate harm was shown to have derived from their participation in the sit-in. Subsequent to the issuance of termination notices, the professors were reinstated but suspended from duties while the administration forwarded dismissal charges to the board of higher education. Representatives of the Association visited the campus approximately two weeks after these events, by which time student supporters of all three professors, in another protest, had occupied the entire administration building. The subsequent investigating committee conceded that, while this was doubtless disruptive, the occupation of the administration building occurred two weeks after the issuance of the notice to the faculty members that they had been separated from their academic responsibilities. Despite these events, and despite an injunction against the professors entering the college's property, the administration allowed one professor to return to campus to file his grades and did not object when the other two undertook to perform the same end-of-semester functions.<sup>22</sup> The case is noteworthy because the suspension obviously heightened the existing tension instead of alleviating it.

At the University of South Florida in September 2001, a tenured Kuwaiti-born Palestinian professor, who for several years had been under the scrutiny of the Federal Bureau of Investigation for alleged terrorist activities, became the object of strong hostility by some viewers when he was interviewed on *The O'Reilly Factor* television show about the events of September 11, 2001. Threats of harm to him, to his family, and even to the campus building housing his department led to his assenting to a decision by the USF administration that he immediately go on paid leave of absence. The university president, commenting on the case in a letter to the faculty, affirmed the professor's "right to state his personal views" and emphasized that he had not been suspended, that his placement on leave "was not a disciplinary action, but an action to ensure safety," and that the leave would continue "until we are confident that it is safe for him to return."

What was initially intended (or at least described) as no more than an emergency measure to ensure safety, however, turned out in short order to be an imposed suspension from teaching, along with banishment from campus, and a prelude to dismissal for cause. An attorney retained by the administration in November produced a legal opinion arguing that the professor's constitutionally protected speech nonetheless disregarded the "substantial disruption" it was causing the university, and the professor thus was acting contrary to "his own obligations as a member of the university's faculty." The governing board, at a special meeting held two months after the president's letter, voted to authorize the professor's dismissal, and that same day charges were brought against him alleging in their main points that his utterances had damaged his employer. The professor's attorney responded that his client was "simply not responsible for the unlawful conduct of those who would threaten to do violence to him or to the university because they disagree with his beliefs," and that his assertion of constitutionally protected rights could not be limited "because a mindless few have chosen to retaliate against him and against the university." The AAUP's investigating committee added that dismissal on the grounds indicated by the charges "cannot be justified—not under sound academic practice, not under general principles of civil liberty, not under principles of academic freedom, and, indeed, not as a matter of sound law."<sup>23</sup>

The university president was to refrain from dismissal action, and thus was to allow the suspension to continue, until the federal government indicted and incarcerated the professor in February 2003. In arguing against the continuation of the expulsion order, prior to the faculty member's arrest, the investigating committee pointed to the elapse of time from the first weeks following September 11, 2001, through the spring 2002 semester and into the summer, until his arrest a year and a half later, all without any manifestation of immediate harm: "Quarantining him from university access for any and all purposes . . . carries a stigma and undercuts academic freedom (by physical exclusion from the means of a professor's ordinary academic work). Moreover, [the professor's] exile—extended again and again—has not been warranted by any discernible exigent public safety concerns." Both the suspension and the quarantine accompanying it "with its duration indefinite" were continued "for an unconscionable amount of time beyond any threat of immediate harm."<sup>24</sup> It would seem that even a demonstrable threat of immediate harm has a way of receding as time passes.

### C. Consultation With a Faculty Committee

*RIR* 5c(1) stipulates that before an administration suspends a faculty member, it should consult with an appropriate faculty committee charged with handling issues of academic freedom and tenure "as to the propriety, the length, and the other conditions of the suspension."

The requirement of consultation reflects the fact that realistically a genuine and immediate threat of harm can hardly be demonstrated in a timely manner through a full due process hearing. When, as seems increasingly to be the case, suspension is justified either by invoking the threat of immediate harm or by relying on some verbal formula that falls far short of that but is nonetheless taken as self-justifying, such a justification is used to trump the necessity, desirability, or even the possibility of consulting with a faculty body. The language of the provision and its placement under Regulation 5 presupposes that the context is one of pending dismissal proceedings preceded by a statement of charges. In the situations considered in this report, however, suspension tends to take place before any formal charges are filed, and may or may not be followed later by a dismissal proceeding.<sup>25</sup>

Faculty consultation of the sort envisioned in this situation may be regarded not only as an appropriate exercise of faculty responsibilities in a matter affecting faculty status but also as a prudent measure on the part of the administration. In a case like that at Indiana State University (see above), the convening of a faculty committee could have introduced a different but nonetheless valuable perspective into the process and, as has been suggested, provided some corroboration for an otherwise unchallenged administrative fiat. At the University of New Hampshire (see Section IV below), a faculty committee was consulted after the initial imposition of suspension but was subsequently undercut by the administration, apparently acting on the advice of legal counsel.

An episode at California State University, Fresno, unfolding in the press at the time this report was being prepared, offers a useful test of some of the issues that we have been discussing.<sup>26</sup> A tenured professor of education, promoted to full professor in 2007 and highly praised for his teaching, was alleged by one student to have talked in a teacher-training class about a school shooting and then to have said, "I wish I could bring my s--- and shoot all of you. Ah, I'm kidding, hah, hah, hah." The complaining student took the expletive to refer to a gun. Other students disagreed, saying that they had never heard the statement. The professor had talked in class about carrying a gun for protection when he was conducting research in sections of Los Angeles. He argued that he makes provocative comments in class on racism, homophobia, religious persecution, and gender bias, "which are things newly credentialed teachers need to have knowledge about if they're going to be effective in the classroom."

The Fresno State administration suspended the professor with pay ten days after the alleged incident was reported, while police investigations went forward. Although his professionalism was defended by his dean, the professor was also known as a demanding teacher who had antagonized some students in the past, and four more students filed complaints charging that he is racist and sexist, though the newspaper reports were not clear on whether or not these complaints followed the incident at issue.

No doubt, in the wake of the tragic deaths at Virginia Polytechnic Institute and State University and Northern Illinois University in 2007 and 2008, an administration must exercise due diligence in ensuring safety on campus. The question at Fresno State would appear to have been whether suspension without any reported faculty consultation was appropriate on the basis of one student's accusation. The preemption of the process by police officers underscores the fact that a faculty committee is most appropriately situated to consider the classroom context in which the alleged remark was made. Due diligence need not mean undue haste. There seems no reason why a faculty committee could not have acted with reasonable expedition, not only eliciting as many facts as it could but also providing a forum in which the professor could respond to the charge, then advising the administration on the desirability of suspension.

#### D. Suspension With Pay

While Association-supported policy specifies continued payment of salary (unless otherwise forbidden by law) in all circumstances in which a suspension is a prehearing sanction, the AAUP has never argued that pay alone is sufficient, whether as a matter of relief, as a way to obviate the potential stain of a suspension, or as a benevolent action that expunges any further obligations on the part of the administration. Continuance of salary is not only an essential ingredient of decent treatment, but even more fundamentally also a recognition that a final determination on the guilt or innocence of the accused faculty member has not yet been reached through a hearing. Moreover, if the subject faculty member is without a salary, mounting a defense against charges is much more difficult, if not impossible. One investigating committee has provided a statement that applies to such cases: "[T]he fact that the professor continued to receive his salary is irrelevant. [He] was summarily deprived of the right to perform his academic duties until his appointment expired."<sup>27</sup> In a case involving the suspensions of three faculty members for one year pending termination, the administration contended that it had exceeded the Association's requirements because it had continued to pay the suspended faculty members for a year while "assigning them no institutional responsibilities." The investigating committee did not agree: "The denial of the right to teach can be an inherent commentary, intended or not, on the faculty member's competence."<sup>28</sup> Thus, in the absence of a demonstrable threat of immediate harm, there is no basis for suspension. "Payment of salary for at least a year in lieu of a year of notification may in certain circumstances be the preferred choice of faculty members who are compelled to seek new positions, but the choice of maintaining continuity of professional life should rest with them." At the University of New Hampshire, the investigating committee found that "although a suspension with pay is obviously less onerous financially for a faculty member than a suspension without pay, its gravity as a sanction imposed on a member of the

academic profession is of the same dimension.”<sup>29</sup>

This subcommittee takes no heart from the fact that in many, if not most, of the cases we examined, the suspended faculty member remained on salary. We suggest, rather, that this practice often reflects one of two less than benign assumptions (and possibly both): first, that continuance of salary relieves an administration from the necessity of a faculty hearing because the adverse action supposedly can no longer be described as a suspension; second, that the continued payment of salary provides a contractual hedge in the event of litigation.<sup>30</sup> In cases of freestanding suspension, however, where the matter has been examined deliberately in a proceeding in accordance with Association-recommended standards of academic due process, suspension without pay may be deemed an appropriate punitive sanction.

#### E. Expulsion or Banishment

The 2003 South Florida report, with its references to the “quarantining” or “exile” of a faculty member from campus facilities, offers a transition into a topic closely related to the “immediate-harm” standard. That is, if the continuation of a faculty member in his or her duties poses such a serious threat to the safety of self or others, for the faculty member’s own protection, as well as that of others, physical removal from the campus may be the only reasonable or responsible course of action. As we noted in the introduction to this report, Association policy nowhere sorts out actions like “quarantine,” “exile,” “banishment,” or “expulsion.”

We have observed that the South Florida administration was initially eager to assert that its action in the case of the suspended professor was not intended as a punitive sanction. This posture is not a common one, but neither is it undocumented in Association case reports, although an administration may subsequently put forth a conflicting rationale. At Meharry Medical College, the faculty members placed on “administrative leave with pay” were instructed to vacate the college in twenty-four hours, removing their own possessions and returning college property. The president initially told the faculty senate that it was in the interests of both the affected faculty members and the institution to free them from all duties for the transitional period (six months) of their terminal contracts, presumably to provide them time to secure alternate employment. Legal counsel, however, alleged that the faculty members had been “disruptive” and “insubordinate” to their “superiors” and negatively affected both sound administration and faculty and student morale.<sup>31</sup>

Sometimes, as with suspension itself, there is no attempt at all on the part of an administration to justify the basis for banishing a faculty member from campus, not even on the most minimal grounds, such as a need for additional office space for other purposes. At the University of Dubuque, the services of fourteen faculty members were terminated on one year’s notice; five of these faculty members, with salary and benefits continued, were told that they would not be assigned any duties in the fall semester because there was no need for their services. Though the reported absence of any need for services, or what was later called “the needs of the university,” would hardly appear to imply the threat of immediate harm, these faculty members were required to vacate their offices and return all university property despite the fact that one of them continued to serve as chair of the faculty assembly until a new chair was elected, and others apparently had some duties.<sup>32</sup> At Elmira College, a faculty member in his second year of service received notice in December that his services were no longer required and his presence not welcome for the remainder of his contract; he was instructed to vacate his office and turn in his keys, and he was notified that paychecks would be mailed to his home address. There are recorded instances of the lock to a professor’s office being changed (Southern University). One suspended professor was barred from the laboratory he codirected, charged with “personal and professional incompetence,” and given notice of nonrenewal.<sup>33</sup> Another professor was told in July of student complaints about his teaching, was given a salary reduction of 40 percent for the next academic year, was suspended in August with tapes of his lectures being turned over to the administration, and was informed of nonrenewal on December 30, at which time he was told to turn in all his keys and college property and remove his possessions from the campus.<sup>34</sup> In another such case, described by its investigating committee as “unwarranted and reprehensible,” a faculty member at a private college was “escorted off the campus by the police in full view of many faculty members and students.”<sup>35</sup> The use of uniformed police or security officers to escort faculty members off campus, even when personal or professional misconduct is not alleged to be at issue and no legal charges have been brought, strikes us as an insulting and grossly disproportionate response to a situation served better by discretion than by drama.

The routinization of the practice of banishment in its present form suggests an intention to add insult to injury. When the effect of suspension is not only to remove the faculty member from teaching duties but also to deny him or her access to the material needed to prove that the charges are groundless and wrongful, such a practice is doubly intolerable. It may be that some instances of banishment have resulted from a misapplication of business practices that might be appropriate in the corporate sector but not in an educational institution. In a business, a disgruntled employee who has been fired could conceivably use his or her office computer to transmit private corporate information to a competitor. In a college or university, such an interest is not likely to be at stake. But unless the threat of immediate harm is so exigent as to require the faculty member not only to be suspended but also to be absent from campus—and we think the standard in that case should be of high magnitude indeed—or unless there is demonstrable evidence that the faculty member’s

office itself contains material or information that poses a high risk to campus security, we see no grounds to support banishment as a sanction superimposed on the suspension itself.

#### IV. Suspension as an Independent Sanction (Freestanding Suspension)

It is well attested in the Association's case history that suspension without a hearing, or a hearing indefinitely deferred, is tantamount to dismissal.<sup>36</sup> Of the cases examined by this subcommittee, only two involve a suspension that clearly was levied as a separate sanction rather than as an action in connection with a pending dismissal, and they do not in all ways raise identical issues to the cases with which we are chiefly concerned. At the University of Missouri, a department chair was suspended for several days and had his pay docked for that period because of his failure to comply with an administrative directive to turn over the names of colleagues who had canceled classes to attend antiwar protests. The investigating committee found the following in this instance:

If one views the suspension as designed to constitute a limited penalty in itself, rather than as an interim step prior to reaching a determination on dismissal, . . . a question of a different sort presents itself. Clearly, a penalty of this significance should not be imposed in the absence of basic safeguards of academic due process . . . minimally . . . an opportunity to defend [oneself] against specific charges before a duly constituted faculty committee, with the burden of proof resting with the administration to demonstrate cause for the application of sanction.<sup>37</sup>

At Macomb County Community College (Michigan), a professor took leave of his duties for four days at the end of the summer session to go to a conference in Stockholm (after trying, without a response, to obtain administrative authorization) and was charged with failing to make arrangements for a substitute. His salary for August was docked for one week's pay, and he was placed on unpaid "disciplinary suspension" for a period of one year. Under the Macomb collective bargaining agreement the matter went to binding arbitration, as a result of which the arbitrator reduced the suspension to one semester without pay. The investigating committee found the sanction grossly disproportionate to the offense.<sup>38</sup>

In neither of these cases was suspension imposed as the result of a hearing and a considered recommendation by a faculty body to suspend. RIR 7a envisions a deliberative proceeding in cases in which the immediate-harm standard is not likely to apply. One might argue, for example, that a serious academic offense (for example, scientific misconduct) was not grounds for dismissal in light of the individual's total record, and certainly not for the application of the "immediate-harm standard," but nonetheless sufficiently serious to justify the imposition of a severe sanction. The University of Missouri and Macomb County Community College cases clearly did not involve charges that rose to that level. For a professor who plagiarized, a suspension would presumably be for a stated term and would be considered to settle the question of the faculty member's continuance, although its being on the record could certainly lead to its further use, inasmuch as it would continue to be relevant in a future proceeding should the offense be repeated.

The University of New Hampshire case offers the kind of situation in which freestanding suspension might conceivably have been the object of the disciplinary proceedings. In that case, a faculty member in the Department of English was suspended, initially without pay, and told to undergo weekly counseling for at least a year at his own expense with "a professional psychotherapist approved by the university" for having allegedly violated a policy on sexual harassment by using sexually charged metaphors to describe the nature of establishing a topic in technical writing. "Shadow sections" were set up for the students who were upset by what they regarded as his inappropriate sexual innuendoes. The reprimand that went with the suspension required that in addition to undergoing mandatory counseling the professor (1) reimburse the university for the cost of those sections, (2) not retaliate against the students who had filed charges, and (3) apologize in writing, by a specified date, to the protesting students for having created a "hostile and offensive academic environment." Since he denied the factual basis of the charges that led to these sanctions, the faculty member refused to comply. In this case, suspension was initially imposed but put in abeyance pending a faculty hearing on the procedures. Though the faculty committee was to find that the professor's grievance had merit and that he had not been granted the opportunity to prepare a defense, three weeks before the committee issued its report he learned that he would not be scheduled to teach any classes during the fall semester, though his salary and benefits would continue. The four conditions attached to the reprimand became part of the conditions on which the suspension would be removed. Although the administration is not on record as having at any time threatened formal dismissal, the sanction ultimately became one of suspension without pay, which, in the absence of the faculty member's compliance, the investigating committee assumed correctly was tantamount to a dismissal for cause. Had a body of the faculty been convened in a due process hearing to render judgment on the matter, under AAUP policy any formal recommendation that might have emerged, up to and including suspension without pay (a suspension with a stated date by which it would be lifted), should have been the end of the matter, absent an appeal by the faculty member to the administration and ultimately the governing board if the recommendation were unfavorable.<sup>39</sup> One lesson of the New Hampshire case, applicable to prehearing suspensions as well as freestanding suspensions, would seem to be that a suspension must be for a stated term and at its end be considered to have met the conditions of the punishment exacted; it cannot be premised on a

suspension of indefinite duration requiring the performance of certain duties (particularly undergoing mandatory counseling, which the professor resisted because its acceptance amounted to a coerced admission of guilt) to be satisfied without becoming a dismissal for cause.<sup>40</sup>

## V. Effects of Suspension on the Faculty Member

More needs to be said about how suspension may not only cause psychological damage but also compromise the ability of the faculty member to respond. At the University of Virginia, a tenured professor who directed a research institute and was accused of misappropriation of funds was reassigned to research duties for the semester in which he had been assigned courses while an investigation into the allegations was under way. Given the absence of due process before the suspension, the investigating committee found that “the cumulative effect of these decisions was to present [the faculty member] with the daunting task of persuading the administration not to dismiss him after it had already, to a significant extent, separated him from his duties as a tenured faculty member at the University of Virginia.”<sup>41</sup>

Quite aside from the long-range effects of a suspension on an individual’s record, more immediate complications may create a climate in which a faculty member, already placed on the defensive, can then be targeted for engaging in further “misbehavior” that in fact might be a consequence of the act of suspension itself. In a case involving a professor at the College of the Ozarks, a charge of “unbecoming conduct” was bolstered by “six allegations, all relating to [the professor’s] behavior *since* his summary suspension on April 14, 1958, and all intended to illustrate the contention that *since* his suspension, [the professor] ha[d] ‘unceasingly carried on a campaign of agitation against the College, its administration, and [its] policies.’”<sup>42</sup> (Emphasis added.) In another instance, a faculty member was notified in May that her contract was being withheld until “some problems surrounding [her] interactions with students and colleagues” could be resolved. In June the administration moved to dismiss her summarily on grounds of “harassment of students and faculty colleagues” She was told she would be paid for the summer term and receive full salary for the following academic year but would not teach a course. In response to her request for a hearing (a hearing body was not convened until January), the president stated seven causes for the action that can be generally clustered under failure to respect students and colleagues, verbal abuse, harassment, demonstration of contempt for students and colleagues, and a failure to serve as a guide, counselor, and mentor to students. The president stated to the hearing committee that he feared “that there was some question about her future actions.” During an interview, she had allegedly “ranted and raved, and used obscenities, cried, and generally expressed herself as a person quite disturbed. I don’t think any of us could accurately predict what she might do in a classroom situation.” The faculty member explained to the investigating committee that she had been under unusual stress because of a painful skin disorder and the terminal illness of her mother.<sup>43</sup> In this case, it may well be that the administration contributed to her state of stress, especially given the fact that some eight months elapsed before she received a hearing on the charges.

The attachment of conditions for removal from suspension further contributes to a hostile climate in which the fairness of any subsequent judicial proceeding—if there is one—is seriously compromised. Sometimes the conditions seem to have no other purpose than that of humiliation, as we have seen at other points in this report. In one egregious instance, a professor was replaced as the course instructor but ordered by the dean to continue to attend the class and listen to the new teacher until further notice, an action triggered by student complaints over his grades. In this instance, the dean repeatedly interrupted the faculty member, took over the class, and “treated [him] like an errant schoolboy in front of his classes” prior to the suspension.<sup>44</sup> Sometimes a condition may be imposed even if dismissal has been decided upon anyway and is attached to the expiration of the faculty member’s existing contract. Thus at one community college, two professors were given notice of nonreappointment fifteen months in advance but suspended from teaching during the final academic year, allegedly because of declining enrollments in the business department. Subsequently, letters were sent to the two faculty members reaffirming the suspension decision but warning that “any conduct which, in the college’s opinion, is detrimental to the interests of its operation, will result in the cessation of the salary-benefit continuation plan.”<sup>45</sup> The investigating committee judged this as an indication of motives for the suspension other than declining enrollments, but the conditions surrounding the suspension, threatening termination if even one misstep (as defined by the administration) occurred, are of the kind that contribute to an intolerable atmosphere for faculty members already under the normal pressures consequent upon termination of services.

## VI. Concluding Comments

This subcommittee has provided an examination of historical experience within the AAUP and what can be drawn from it by way of policy discussion. Such a discussion might turn on the question whether there are changes in campus climate sufficient to call for a review, from the ground up, of at least the rhetorical adequacy of current AAUP policy. Certainly new technologies such as e-mail and computing have extended the potentially damaging effects of suspension actions since the days when access to the classroom was the principal, if not the only, issue. But to come at the matter from a different angle, we also report in the wake of heightened campus tensions ranging from fatal gunfire in a classroom to threatening graffiti that cause an entire campus to shut down. Does the Association have an affirmative obligation

to counsel administrations on how they might resist public pressure for quick action lest another tragic or threatening instance were to occur for which they would be held accountable? The fact is—and one could argue that this has always been the case—that classical academic freedom issues are not always in play in a suspension action, notably in an emergency situation. The irrational behavior of a faculty member who endangers his or her colleagues because he or she has access to dangerous biological agents may require quick administrative action in the first instance, with faculty follow-up. Some may believe that such cases involve questions of degree, not kind; others may disagree and believe either that new policy is needed or that, at the very least, existing policy needs to be recast in such a way as to acknowledge legitimate safety concerns more clearly and to take into account the intense nature of public pressure on those whose oversight of an institution includes direct responsibility for public safety. We will be content if this report begins that discussion.

Lawrence S. Poston, chair  
Subcommittee

## Relevant Committee A Case Reports

*These case reports are listed by name of institution and date of publication (not the date of the events), with page numbers from the issue of the AAUP Bulletin or Academe in which they first appeared.*

Adelphi University (Autumn 1967): 278–91.  
[Albertus Magnus College](#) (Connecticut) ( January–February 2000): 544–63.  
 Alfred University (New York) (Spring 1970): 87–93.  
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 Birmingham-Southern College (Alabama) (May 1979):228–39.  
[City University of New York](#) (November–December 2004): 43–55.  
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[University of Dubuque](#) (September–October 2001):62–73.  
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[University of South Florida](#) (May–June 2003): 59–73.  
 University of Southern California (November–December 1995): 40–51.  
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[Talladega College](#) (Alabama) (May–June 1986): 6a–14a.  
 Tennessee State University (May–June 1987): 39–44.  
 Texas A&M University (Winter 1967): 378–84.

University of Texas Health Sciences Center at Houston (Winter 1976): 364–68.

[University of Virginia](#) (November–December 2001): 49–60.

[Virginia State University](#) (May–June 2005): 47–62.

[Yeshiva University](#) (New York) (August 1981): 186–95.

## Endnotes:

1. According to a staff memorandum, the Association, since its founding in 1915, has published nearly 120 reports in which suspension has figured as an element in the case, beginning with 1917 and 1919 reports on the University of Montana. It should also be borne in mind that literally thousands of complaints and cases involving suspension have been dealt with by the Association over nearly a century that never reached the investigative stage, much less became the subject of a published report. The report that follows was prepared by a subcommittee of Committee A on Academic Freedom and Tenure. An initial draft of the report was reviewed by the committee at its June 2008 meeting, and the chair of the subcommittee revised the draft in the light of suggestions by committee members. The revised text was approved for publication in August 2008. [Comments](#) are welcome and should be sent to the Association's Washington office. [Back to text](#)

2. "Academic Freedom and Tenure: College of the Ozarks," *AAUP Bulletin* 49 (Winter 1963): 358. [Back to text](#)

3. "Academic Freedom and Tenure: St. John's University (New York)," *AAUP Bulletin* 52 (Spring 1966): 18–19. [Back to text](#)

4. See "Academic Freedom and Tenure: St. Mary's College (California)," *AAUP Bulletin* 62 (Spring 1976): 73: "The investigating committee disagrees sharply with the assertion that a unilateral administrative decision not to offer a hearing can be in the best interests of a faculty member. A formal hearing can result, in some cases, in embarrassment and even stigmatization for the faculty member involved. The waiver of dismissal proceedings, however, lies not within the discretion of the administration but . . . [that] of the affected faculty member." The same can be said for hearings on suspension. The severity of the sanction is underlined in the case of Armstrong State College, where the administration attempted to argue that, since a suspended faculty member's appointment had not been renewed prior to the suspension, the suspension itself was of negligible importance. The investigating committee objected: "The fact of nonrenewal does not in itself imply adverse judgment with regard to an individual faculty member's fitness to teach. The enforced separation of a teacher from his classroom, however, is an action of severity, to be taken only for serious and pressing reasons, with significant professional damage to the individual's future in teaching" ("Academic Freedom and Tenure: Armstrong State College [Georgia]," *AAUP Bulletin* 58 [Spring 1972]: 74). [Back to text](#)

5. The first seven are as follows: "a. An oral reprimand; b. A written reprimand; c. A recorded reprimand; d. Restitution (e.g., payment for damage done to individuals or to the institution); e. Loss of prospective benefits for a stated period (e.g., suspension of 'regular' or 'merit' increase in salary, suspension of promotion eligibility); f. A fine; g. Reduction in salary for a stated period." [Back to text](#)

6. Donna R. Euben and Barbara A. Lee, "Faculty Discipline: Legal and Policy Issues in Dealing with Faculty Misconduct," *Journal of College and University Law* 32 (2006): 241–308, offers a longer list of lesser sanctions more elaborate than the Association's, prefacing it with the workplace idea of "progressive discipline," in which behavior, when repeated, may be subject to increasingly severe degrees of sanction. The Association appears never to have dealt formally with this issue, perhaps in part not only because by its nature academic work is less repetitive than work in some other settings, but also because many cases involve faculty members not heretofore charged with any kind of misconduct whose actions suddenly give offense to an administration. College and university files doubtless contain instances of reprimands accompanied by the threat of more serious penalties if the behavior is repeated (the principal author of this report is aware of such an instance at his own institution), but predictably many such instances may be assumed to have flown under the Association's radar. The Euben and Lee article has provided valuable information from legal sources for some of the issues we deal with here. [Back to text](#)

7. "Academic Freedom and Tenure: University of Southern California," *Academe* 81 (November–December 1995): 47–48. [Back to text](#)

8. This runs contrary to actual case history, though one of the most egregious cases reported avoids the term "suspension" in describing what happened. At Texas A&M University, the professor, a tenured faculty member with sixteen years of experience and a promotion to full professor two years before the events, was placed on "probation" and reassigned to research duties under conditions so intolerable as to make it difficult, if not impossible, for him to carry them out ("Academic Freedom and Tenure: Texas A&M University," *AAUP Bulletin* 53 [Winter 1967]: 379–80). The research assignment was extended a second year with the promise (unfulfilled at the time of the report) of "a proper hearing on his fitness to assume a full-time teaching position." At Armstrong State College, a faculty committee majority found that a mandatory leave constituted a suspension not provided for in the college's own statutes, a view with which the investigating committee concurred. A minority of the same faculty committee took a different view because the faculty member could still perform committee and

department assignments. [Back to text](#)

9. We return to the issue of suspension with pay in Section III.D below. With respect to definitional issues in investigations, see “Academic Freedom and Tenure: Adelphi University,” *AAUP Bulletin* 53 (Autumn 1967): 285, where the investigating committee “reject[ed] flatly the [administration’s] effort to draw a distinction between a suspension and a ‘terminal leave of absence with salary.’” The committee wryly noted that “the distinction appears to be no more than an effort to borrow the happy connotations which the phrase ‘terminal leave’ carries in military service to mask removal from the classroom, in this case on flimsy charges and without a hearing.” At Meharry Medical College, handbook guidelines broadly comporting with AAUP-supported standards for suspension were circumvented by the administration’s declaring the affected faculty members to be on “administrative leave with pay” (“Academic Freedom and Tenure: Meharry Medical College [Tennessee],” *Academe* 90 [November–December 2004]: 73). [Back to text](#)

10. “University of Southern California,” 43, 46. [Back to text](#)

11. An interesting twist on these cases is offered by the Loma Linda University report, involving clinical professors of medicine who, although deriving their income chiefly from practice, nonetheless were in the investigating committee’s judgment entitled to be treated as faculty because they took on such traditional faculty duties as teaching, research, and training of interns. See “Academic Freedom and Tenure: Loma Linda University,” *Academe* 78 (May–June 1992): 42–49. [Back to text](#)

12. “Academic Freedom and Tenure: University of South Florida,” *AAUP Bulletin* 50 (Spring 1964): 54. [Back to text](#)

13. “College of the Ozarks,” 358; “Adelphi University,” 281; “Academic Freedom and Tenure: Amarillo College,” *AAUP Bulletin* 53 (Autumn 1967): 300; “Academic Freedom and Tenure: Elmira College,” *AAUP Bulletin* 61 (Spring 1975): 66–70; “Academic Freedom and Tenure: Birmingham–Southern College,” *Academe* 65 (May 1979): 237. [Back to text](#)

14. “Birmingham–Southern College,” 237. [Back to text](#)

15. “Academic Freedom and Tenure: Oklahoma College of Osteopathic Medicine and Surgery,” *Academe* 71 (May–June 1985): 39. [Back to text](#)

16. “Academic Freedom and Tenure: Philander Smith College,” *Academe* 90 (January–February 2004): 61. [Back to text](#)

17. “St. Mary’s College,” 71. [Back to text](#)

18. “Armstrong State College,” 72, 75. [Back to text](#)

19. “Academic Freedom and Tenure: University of South Florida,” *Academe* 89 (May–June 2003): 67. We return to this case in more detail below. In a recently publicized incident at Saint Xavier University (Chicago), the campus was closed temporarily because of a graffiti threatening violence on a specific date. If an incident like this led to the identification of a faculty malefactor, the demonstration of immediate harm to institutional operation would conceivably be a relatively easy matter. As it happens, a student has since been charged. [Back to text](#)

20. “Academic Freedom and Tenure: University of New Hampshire,” *Academe* 80 (November–December 1994): 76. [Back to text](#)

21. “Academic Freedom and Tenure: Indiana State University,” *AAUP Bulletin* 56 (Spring 1970): 56, 58–59. [Back to text](#)

22. “Academic Freedom and Tenure: Queensborough Community College,” *AAUP Bulletin* 59 (Spring 1973): 52. [Back to text](#)

23. “University of South Florida” (2003), 62, 67. [Back to text](#)

24. *Ibid.*, 66, 69. [Back to text](#)

25. At the University of New Hampshire, the faculty member argued that cancelation of his fall teaching schedule, prior to the issuance of the report of a hearing panel studying his grievance, made it unlikely that he could receive a fair hearing. [Back to text](#)

26. Doug Hoagland, “Fresno State Professor Suspended: Two Students Allege Shooting Threat, Others Deny It,” *Fresno Bee*, May 5, 2008. [Back to text](#)

27. “Academic Freedom and Tenure: Southern University,” *AAUP Bulletin* 54 (Spring 1968): 16. [Back to text](#)

28. “Academic Freedom and Tenure: Yeshiva University,” *Academe* 67 (August 1981): 194. Similarly, in the case of St. Mary’s College, the administration conceded that it had overlooked its own faculty handbook provisions but that paying the balance of salary while not demanding that the professor teach was a “generous act.” [Back to text](#)
29. “University of New Hampshire,” 76. [Back to text](#)
30. “Courts generally rule that suspension with pay does not trigger constitutional due process concerns at public institutions” (Euben and Lee, “Faculty Discipline,” 277). The same line of reasoning has led to the argument, in *Simonson v. Iowa State University* (1999), that paid administrative leave “did not trigger due process protections under the state and federal constitutions because [the professor] was not deprived of any economic benefits” (278). [Back to text](#)
31. “Meharry Medical College,” 73. [Back to text](#)
32. “Academic Freedom and Tenure: University of Dubuque,” *Academe* 87 (September–October 2001): 62–73. [Back to text](#)
33. “Academic Freedom and Tenure: University of Texas Health Sciences Center at Houston,” *AAUP Bulletin* 62 (Winter 1976): 367. [Back to text](#)
34. “Academic Freedom and Tenure: College of Osteopathic Medicine and Surgery (Iowa),” *AAUP Bulletin* 63 (April 1977): 87. In this instance, the investigating committee treated the salary reduction in tandem with suspension as a severe sanction requiring full due process under RIR 7; since the suspension was never lifted, it was in effect a dismissal. [Back to text](#)
35. “Academic Freedom and Tenure: Mount Marty College (South Dakota),” *Academe* 85 (May–June 1999): 58. See also the case of Oklahoma College of Osteopathic Medicine and Surgery, in which three faculty members were ordered off campus, escorted by security officers. [Back to text](#)
36. A reasonably typical case is that of the King’s College, in which suspension with pay for a terminal year was followed neither by reinstatement nor by opportunity for a hearing (“Academic Freedom and Tenure: The King’s College [New York],” *Academe* 76 [July–August 1990]: 45–52). Also relevant are cases, like a number of the ones we have reviewed, involving nontenured faculty members who have been given notice of nonreappointment and then had a terminal suspension added to that notice, even though their salary may have been continued. [Back to text](#)
37. “Academic Freedom and Tenure: University of Missouri, Columbia,” *AAUP Bulletin* 59 (Spring 1973): 43. The only hearing afforded, after the fact of the suspension, was before the board of curators. No threat of immediate harm was ever alleged. [Back to text](#)
38. “Academic Freedom and Tenure: Macomb Community College (Michigan): A Report on a Disciplinary Suspension,” *AAUP Bulletin* 62 (Winter 1976): 369–76. [Back to text](#)
39. The case was complicated by the fact that it was heard ultimately by mixed faculty-student-staff committees; in one case the chair was a student. [Back to text](#)
40. The New Hampshire case was ultimately resolved in the courts, which found that the sanctions against the professor, taken as a whole, constituted “more than a de minimis deprivation of [the faculty member’s] due process rights,” and that his suspension without pay provided an independent basis for a preliminary injunction on the grounds of prior and continuing irreparable harm to the faculty member (*Silva v. New Hampshire*, 1994; Euben and Lee, “Faculty Discipline,” 281). See also Euben and Lee’s discussion of a related case, *Delahoussaye v. Board of Supervisors of Community and Technical Colleges* (2005); the two cases together seem to provide evidence encouraging institutions to continue the payment of salary to a suspended faculty member in order to avoid claims of economic damage. [Back to text](#)
41. “Academic Freedom and Tenure: University of Virginia,” *Academe* 87 (November–December 2001): 54. [Back to text](#)
42. “College of the Ozarks,” 357. [Back to text](#)
43. “Birmingham-Southern College,” 231, 232, 238. [Back to text](#)
44. “Academic Freedom and Tenure: Tennessee State University,” *Academe* 73 (May–June 1987): 43. [Back to text](#)

45. "Academic Freedom and Tenure: Dean Junior College (Massachusetts)," *Academe* 77 (May–June 1991): 28. [Back to text](#)

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