

September 24, 2021

VIA ELECTRONIC MAIL

Professor Matthew Boedy, President
Georgia Conference of the American Association of University Professors
Department of English
University of North Georgia
3820 Mundy Mill Road
Oakwood, Georgia 30566

Dear Professor Boedy:

In your capacity as president of the Georgia AAUP conference, you have advised the national office of the American Association of University Professors of proposed changes to the post-tenure-review provisions in section 8.3 of Board of Regents Policy Manual for the University System of Georgia. The text of these revisions, titled “Proposed Board Policy Revisions [on] Post-Tenure and Annual Review (8.3),” was included in the agenda packet for the board’s September 9, 2021, meeting, prefaced with the notice that “the proposed revisions will be presented to the Board of Regents at the October [12–13, 2021] board meeting for approval.” You have asked the AAUP’s staff to comment on the degree to which the proposed language comports with Association-recommended principles and standards on academic freedom and tenure. After setting out some preliminary considerations, we will discuss two of the most problematic changes in the proposal.

Preliminary Considerations

Since its founding in 1915, the AAUP has sought to promote the common good by advancing principles and standards of academic freedom, tenure, and governance in higher education. The understanding of academic freedom and tenure prevalent in American higher education derives from the enclosed 1940 *Statement of Principles on Academic Freedom and Tenure*, the joint formulation of the AAUP and the Association of American Colleges and Universities. The 1940 *Statement*, the tenets of which most reputable colleges and universities have incorporated into their regulations, argues that academic freedom in higher education serves the common good and that tenure is necessary to protect academic freedom. The premise is of course that faculty members whose appointments are insecure will lack the freedom to teach, conduct research, and participate in institutional governance with the utmost effectiveness. USG Board Policy 6.5 therefore affirms that, “[a]s public institutions of higher education, USG institutions must promote open ideas and academic freedom on their campuses.”

The concept of tenure is often misunderstood. The understanding of tenure employed by the AAUP is “an indefinite appointment terminable only for cause.” In order for a tenured faculty member to be dismissed for cause (i.e., for reasons related to professional fitness), an elected

faculty body, in an pre-termination hearing, must find that the administration has made its case that the faculty's conduct or performance warranted dismissal. The burden of proof in such a proceeding is on the administration. AAUP-supported dismissal standards are set forth in Regulation 5 , Dismissal Procedures, of the AAUP's *Recommended Institutional Regulations on Academic Freedom and Tenure* (enclosed). We are pleased to note that Board Policy 8.3.9.2, Procedures for Dismissal, is derived virtually verbatim from Regulation 5.

As post-tenure review undermines both the presumption of competence that accompanies tenure and the security that tenure was designed to provide, the AAUP has historically opposed it. In 1983, the AAUP's Committee A on Academic Freedom and Tenure predicted that "periodic formal institutional evaluation of each postprobationary faculty member would bring scant benefit; would incur unacceptable costs, not only in money and time but also in dampening of creativity and of collegial relationships; and would threaten academic freedom." Based on what faculty members have reported to the AAUP, institutional experience in the ensuing decades has served only to confirm the accuracy of this prediction.

In the 1990s, when an increasing number of institutions began to adopt such policies, the AAUP conceded to that reality by issuing the enclosed *Post-Tenure Review: An AAUP Response*. While reaffirming the AAUP's opposition to post-tenure review, the statement recommended eleven "minimum standards" for those institutions where adoption of post-tenure review policies was inevitable. It based those eleven standards on the following principles:

- Post-tenure review ought to be aimed . . . at faculty development.
- Post-tenure review must be developed and carried out by faculty.
- Post-tenure review must not be a reevaluation of tenure, nor may it be used to shift the burden of proof from an institution's administration (to show cause for dismissal) to the individual faculty member (to show cause why he or she should be retained).
- Post-tenure review must be conducted according to standards that protect academic freedom and the quality of education.

Board-Proposed Changes to the USG Post-Tenure Review Policy

8.3.5.4 Post-Tenure Review

While some of the proposed changes to this section seem consistent with the guiding principles and standards in *Post-Tenure Review: An AAUP Response*, several are not (it is evident, for example, that peer review, though present in the review process, is not nearly as robust as the AAUP would prefer). Two proposed revisions are of major concern.

The first relates to faculty governance. Regarding the role of the faculty in developing a new post-tenure review policy, the proposal is silent. Under AAUP-supported standards of academic governance, as set forth in the enclosed *Statement on Government of Colleges and Universities*, the joint formulation of the AAUP, the American Council on Education (ACE), and the Association of Governing Boards of Universities and Colleges (AGB), matters of faculty evaluation are the "primary responsibility" of the faculty. Under the *Statement on Government*, an appropriate faculty body is one that consists of faculty members selected by faculty members,

which raises the question whether appropriate faculty bodies in the USG system were meaningfully involved in developing this policy. Under AAUP-supported governance standards, furthermore, “meaningful involvement” signifies the opportunity for appropriate faculty bodies independently to debate and vote on proposed academic policies, especially those relating to faculty evaluation. If these governance standards were not met in the development of the proposal, the USG faculty would arguably have grounds to question the legitimacy of both the process and the outcome.

The proposal states that “each tenure-granting institution must create its own specific policies for implementing this post-tenure review policy,” but it does not mention the role of each institution’s faculty, much less its centrality, in that process. Although the policy’s specificity seems to leave scant latitude for further elaboration, sound governance standards dictate that those faculties will play a central role.

The second issue, posed by the sentence situated at the end of the following paragraphs, relates to academic freedom and tenure:

If the results of the post-tenure review are unfavorable, then a performance improvement plan shall be created by the applicable department chair and dean in consultation with the faculty member. . . . If the faculty member fails to make sufficient progress in performance as outlined in the performance improvement plan (or refuses to engage reasonably in the process) as determined by the department chair and dean after considering feedback from the appropriate group of faculty colleagues, then the institution shall take appropriate remedial action corresponding to the seriousness and nature of the faculty member’s deficiencies. . . .

Remedial actions [i.e., disciplinary sanctions] may include, but are not necessarily limited to, suspension of pay, salary reduction, revocation of tenure, and separation from employment [the difference between these last two sanction is unclear]. . . . The determined remedial action will be imposed in accordance with the guidelines provided by the Chancellor or the Chancellor’s designee(s) as well as the institution’s post-tenure review policies. *The institution’s imposition of such remedial action will not be governed by or subject to the Board Policy on Grounds for Removal or Procedures for Dismissal.* (Emphasis added)

The italicized provision is extraordinary. While it cannot be said to do away with tenure entirely, it certainly moves in that direction by making it possible to dismiss a tenured faculty member—without affordance of academic due process—for failing to fulfill the terms of an imposed performance improvement plan, as determined by an administrator, not a body of peers. As we noted earlier, the AAUP understands tenure to be an indefinite appointment terminable only for cause as demonstrated in a hearing before an elected faculty body, with the burden of proof resting with the administration. Tenure without these procedural protections is tenure in name only. And the AAUP regards an action to terminate the services of a tenured faculty member without such a process as a summary dismissal in violation of the 1940 *Statement*. Such actions have been the subject of multiple AAUP investigations.

The proposed new 8.3.5.4 does incorporate an appeal process: “An aggrieved faculty member may seek discretionary review of the institution’s final decision pursuant to the Board Policy on Applications for Discretionary Review” (Board Policy 6.26). This policy allows a grievant to petition the USG office of legal affairs for review before that office renders a “final and binding” decision. A far cry from the academic-due process described above, this procedure clearly violates the principle articulated in *Post-Tenure Review* that “[p]ost-tenure review must not be . . . used to shift the burden of proof from an institution’s administration (to show cause for dismissal) to the individual faculty member (to show cause why he or she should be retained).” (It is also at odds with Board Policy 8.3.9.1, which states, “In imposing sanctions, the burden of proof lies with the institution.”)

As we have suggested, this provision, if adopted, would tend significantly to undermine academic freedom and tenure in the USG system.

8.3.9 Discipline and Removal of Faculty Members

The proposed provision in 8.3.5.4 denying academic due process to tenured faculty members when an administrator deems inadequate their efforts to fulfill the terms of an imposed performance improvement plan is indeed remarkable. But section 8.3.9 contains an even more unusual provision that, if adopted, would tend even more to undermine academic freedom and tenure in the Georgia university system.

The current version of 8.3.9 provides that the president of a system institution or the president’s designee “may at any time remove any faculty member . . . for cause.” Such a provision is not unusual in institutional regulations, nor is it at odds with AAUP-supported standards—as long as it is followed by provisions guaranteeing academic due process for faculty members dismissed for cause. And such is the case with the USG board policy manual, section 8.3.9.2 of which, as we have noted, incorporates academic due process procedures for dismissal based substantially on Regulation 5 of the Association’s *Recommended Institutional Regulations on Academic Freedom and Tenure*.

The proposed revision, however, adds the following language:

Such removals for cause shall be governed by the following policies on Grounds for Removal [8.3.9.1] and Procedures for Dismissal [8.3.9.2]. A faculty member may also be separated from employment prior to the end of the contract term other than for cause as outlined here, pursuant to other policies of the Board of Regents. Such other policies shall not be governed by or subject to the following policies on Grounds for Removal and Procedures for Dismissal.

While the first sentence merely makes explicit what is already the case, the plain meaning of the succeeding sentences is that faculty members with indefinite tenure as well as faculty members without tenure can be dismissed summarily if the grounds are other than those enumerated in 8.3.9.1, Grounds for Removal. Section 8.3.9.1, for the most part, is consistent with the AAUP’s Recommended Institutional Regulation 5a—“Adequate cause for dismissal will be related, directly and substantially, to the fitness of faculty members in their professional capacities as

teachers or researchers.” The stated grounds for dismissal for cause in 8.3.9.1, with one or two exceptions, are therefore typical in higher education.

The doorway opened by the new language is a wide one: if an institution of higher education can dismiss any faculty member without affordance of academic due process for unspecified reasons—as long as those reasons are not among the listed grounds for dismissal—then the system of tenure and the academic freedom it is designed to protect are severely compromised, as are the appointment security and academic freedom of non-tenured faculty members.

As noted above, and as our staff has stated in countless letters conveying Association concerns to administrative officers, the AAUP regards an action to dismiss a faculty member without affordance of academic due process as inimical to the principles and standards set forth in the 1940 *Statement of Principles on Academic Freedom and Tenure* and derivative AAUP policy documents. If, therefore, either of these proposed revisions to tenure protections in the USG regulations were to be adopted and if, as a result, faculty members were dismissed absent such affordance, the Association would be compelled to intervene.

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We hope these comments are useful to you and your colleagues, especially those serving in USG institutions. Please let us know whether you have any questions or whether we can assist in other ways.

Sincerely,

A handwritten signature in cursive script that reads "Gregory F. Scholtz". The signature is written in black ink and is followed by a horizontal line extending to the right.

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

Enclosures by email attachment