

September 24, 2024

VIA ELECTRONIC MAIL

Dr. Kathleen Harring
President
Muhlenberg College
Allentown, Pennsylvania

Dear President Harring:

As you know from our enclosed letters of March 18 and April 10, the AAUP has taken an official interest in the case of Professor Maura Finkelstein, who was summarily suspended from service in January because of a pending investigation into student complaints regarding her speech and conduct related to the war in Gaza.

Professor Finkelstein has subsequently informed us that, in accordance with the college's equal opportunity policy, a formal panel consisting of staff members and of faculty members appointed by Provost Laura Furge in consultation with the faculty nominating committee, convened to adjudicate her case. The panel determined, according to its May 1 report, that she was responsible for "bias related conduct" in "repost[ing] a written statement on Instagram calling for "shaming Zionists, not welcoming them into your spaces, making them feel uncomfortable, not normalizing Zionists, calling them racists, and not allowing Zionists to take up space." The report also found Professor Finkelstein responsible for online discrimination and harassment, discrimination, and harassment for the same repost.

In its May 8 determination letter, the panel recommended the sanction of "termination for just cause." We understand further that the provost concurred with the panel's recommendation and informed Professor Finkelstein by letter of May 30 that her appointment was terminated as of that day "pending an appeal and the procedures referenced in Section VII of the College Equal Opportunity Complaint and Resolution Policies for Faculty." We recently learned that Professor Finkelstein's appeal under those policies was rejected by a college-appointed external appeals officer.

Professor Finkelstein has advised us that she has also appealed the dismissal action under the procedures set forth in the Muhlenberg College Faculty Handbook relating to termination for just cause (Section 4.3.2.1), which, notwithstanding the May 30 dismissal notice, explicitly states, "Termination will not be regarded as final until this appeal process has been completed." Professor Finkelstein reports that almost four months after having been notified of her dismissal, she has yet to be afforded that process.

We find this departure from your own regulations deeply troubling, especially because it also disregards a crucial element in the AAUP's understanding of academic due

process—that a dismissal action must be preceded by an adjudicative hearing before an elected faculty body in which the administration bears the burden of demonstrating just cause for dismissal. This process, which is set out in Regulations 5 of the enclosed *Recommended Institutional Regulations on Academic Freedom and Tenure*, is incorporated in Section 4.3.1.2 of the faculty handbook, which comports with Regulation 5 in almost all essential respects.

The most critical exception is a provision in 4.3.2.1 that appears to grant the Faculty Personnel Policies Committee (FPPC) the discretion to refuse to hear a dismissal case, a policy completely at odds not only with AAUP-supported standards but also with normative academic practice. But even if the FPPC were to determine that a formal review is warranted, the practical effect of affording a long-serving faculty member a dismissal hearing only *after* dismissing her inevitably serves to disadvantage that faculty member by implying that the charges to be proved have already been demonstrated and that it is thus her responsibility to overcome that presumption.

Other departures in Section 4.3.1.2 from AAUP-supported standards include denying the faculty member the right to be accompanied by legal counsel (even though the FPPC has that right) and failing to afford the faculty member the right to appeal to the governing board (Regulation 6).

While we expect that the Muhlenberg administration will abide by the college's regulations and afford Professor Finkelstein the procedures set out in Section 4.3.1.2, we urge that she be permitted to be accompanied by legal counsel and to file an appeal of any adverse decision to the board of trustees.

Despite the prospect of a resolution in Professor Finkelstein's case that will accord with AAUP-recommended standards of academic due process, issues of basic concern to our Association remain, especially with regard to academic freedom. Under the 1940 *Statement of Principles on Academic Freedom and Tenure*, the joint formulation of the American Association of Colleges and the AAUP, academic freedom includes the right of faculty members to "be free from institutional censorship or discipline" when "they speak or write as citizens." Section 4.2, Academic Freedom, of the faculty handbook echoes this language and states that the college's "position on the guarantee of academic freedom is informed by and relies on" the 1940 *Statement*, with 1970 Interpretive Comments." The 1970 Interpretive Comments add, "The controlling principle" in determining whether to discipline a faculty member for extramural speech "is that a faculty member's expression of opinion as a citizen cannot constitute grounds for dismissal unless it clearly demonstrates the faculty member's unfitness for his or her position. Extramural utterances rarely bear upon the faculty member's fitness for the position. Moreover, a final decision should take into account the faculty member's entire record as a teacher and scholar."

In addition to extramural speech, Professor Finkelstein's case presents additional issues of potential interest to our members and to the academic community at large. These

include whether expressions of opposition to Zionism or the government of Israel can be tantamount to antisemitism, discrimination, and harassment of students; how compliance with equal opportunity requirements on a campus intersects with institutional policies governing academic freedom, due process, and faculty governance; and the extent to which controversy stemming from the war in Gaza can affect campus conditions for academic freedom and due process.

In an attempt to explore the issues posed by Professor Finkelstein's case, the Association's executive director has authorized a committee of inquiry composed of three AAUP consultants versed in the issues implicated in this case and particularly in applicable Association-supported standards to visit Allentown to discuss the situation with Professor Finkelstein, other involved faculty members, and key members of the administration and board of trustees before preparing a report of findings.

The committee will submit a draft report to the Association's standing Committee A on Academic Freedom and Tenure, which is authorized to release the draft to the principal parties for comments and corrections of fact. Their responses will be taken into account in the preparation of the final text, which may be posted on our website and otherwise made public.

We will write again shortly with further details about the committee members and a proposed schedule for their visit to Allentown.

Thank you in advance for your participation.

Sincerely,



Anita Levy, Ph.D.
Senior Program Officer

Enclosures via email

Dr. Lance Richard Bruck, Chair, Board of Trustees
Dr. Laura Furge, Provost
Ms. Jennifer Storm, Director, Equity and Title IX
Professor Melissa Dowd, Chair, Faculty Personnel and Policies Committee
Professor Erika Bagley, Member, Faculty Personnel and Policies Committee
Professor Raymond Barnes, Member, Faculty Personnel and Policies Committee
Professor Ermira Mazziotta, Member, Faculty Personnel and Policies Committee
Professor Linda McGuire, Member, Faculty Personnel and Policies Committee
Professor Benjamin Carter, Chair, Sociology and Anthropology Department
Professor Dennis Deslippe, President, Pennsylvania Division of the AAUP
Professor Maura Finkelstein