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# Report of the Committee on College and University Governance, 2020–21

## Introduction

During the 2020–21 academic year, the Committee on College and University Governance focused on two major projects: the sweeping COVID-19 governance investigation and the 2021 Shared Governance Conference.

## Judicial Business

### Impositions of Sanction

At its May meeting, the committee considered the eight cases discussed in the special investigative report *COVID-19 and Academic Governance*. Regarding six of the cases, the committee adopted the following statements, all of which include a recommendation to the AAUP's governing Council that AAUP sanction be imposed for "substantial noncompliance with standards of academic government." After reviewing the committee's statements at its June meeting, the Council voted to add the six colleges and universities to the Association's list of sanctioned institutions.

*Canisius College (New York)*. The report of the investigating committee concerns actions taken in July 2020 by the Canisius College governing board and administration to discontinue nine academic programs and terminate the services of twenty-two faculty members, most of whom held tenured appointments, in a stated attempt to address preexisting financial challenges exacerbated by the COVID-19 pandemic. The report describes the process preceding this action as departing from the provisions of the *Statement on Government of Colleges and Universities* and Regulation 4 of the *Recommended Institutional Regulations on Academic Freedom and Tenure*: no declaration of financial exigency preceded the program closures and appointment terminations; instead of employing existing faculty governance bodies and processes to

address the financial issues, the administration created an ad hoc committee dominated by administrators and pledged to confidentiality; the collective faculty was not provided the information or the opportunity to "render an assessment in writing" of the college's financial condition; no faculty body identified which faculty appointments to terminate; the administration did not provide faculty members whose programs were slated for discontinuance with thirty days to respond to the closure proposal; the administration made no effort, much less "every effort," to find other suitable positions within the institution for affected faculty members; and the administration declined to afford any of the faculty members whose appointments were terminated the opportunity for a faculty hearing in which to contest the terminations.

The investigating committee accordingly found that, in so acting, the administration and governing board had "disregarded normative standards of academic governance." It further found that, in taking these actions, the administration and governing board had "degraded conditions for shared governance, weakened tenure, and damaged the climate for academic freedom."

The Committee on College and University Governance recommends to the AAUP's governing Council that Canisius College be added to the Association's list of institutions sanctioned for substantial noncompliance with standards of academic government.

*Keuka College (New York)*. The report of the investigating committee describes departures from AAUP-supported standards of academic governance evident in the governing board's unilateral suspension of critical portions of the faculty handbook, the closing of academic programs and departments, and the elimination of twelve tenured or tenure-track faculty

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

The investigating committee found that the administration of Keuka College seriously infringed Association-supported standards of institutional governance. The Committee on College and University Governance concurs and accordingly recommends to the Association's governing Council that Keuka College be added to the Association's list of institutions sanctioned for substantial noncompliance with standards of academic government.

*Marian University (Wisconsin)*. The report of the Association's investigating committee described the situation at Marian University as resembling that of many of the institutions discussed in the special report on the COVID-19 pandemic and academic governance. The university, having had financial problems for some time, suddenly suspended its normal processes, announced an "enrollment emergency" without declaring a state of financial exigency, and ignored any obligations to observe AAUP-supported governance standards. It did so, the report observed, to facilitate making quick personnel changes, including the termination and nonrenewal of the appointments of nine tenured or tenure-track faculty members (out of a total of around seventy). The report surmised that many of these changes might have been under consideration previously, but that the pandemic provided an "alternative explanation" for what may have been long-standing goals of cost-cutting, achieving leaner operations, and reducing student choices. The report emphasized that AAUP-supported governance and academic freedom standards serve different goals: improving educational quality by bringing professional expertise to bear on curricular decision-making and by protecting academic freedom through academic due process and tenure. The report expressed the hope that Marian University had not permanently abandoned these principles and goals, the importance of which it affirms in its regulations.

The investigating committee found that, in acting to close programs and terminate the appointments of nine tenured and tenure-track faculty members, the administration and governing board of Marian University disregarded principles and standards of academic governance articulated in the *Statement on Government of Colleges and Universities* as well as principles and standards of academic freedom and tenure.

The Committee on College and University Governance recommends to the AAUP's governing Council that Marian University be added to the Association's list of institutions sanctioned for substantial noncompliance with standards of academic government.

*Medaille College (New York)*. The investigating committee's report addresses the actions of the Medaille College president and governing board to respond to a preexisting budget crisis that, they argued, was exacerbated by the COVID-19 pandemic. In response, the president invoked a provision of the faculty handbook, over the vehement opposition of the Faculty Council, that permitted him to petition the chair of the board to suspend the handbook when faced with "natural disasters, acts of God, declared states of emergency or other emergency situations." The unilateral suspension of the faculty handbook facilitated the termination or nonrenewal of the appointments of seven tenured and tenure-track faculty members through an administratively appointed and administratively driven task force. The report found no evidence that faculty representatives participated meaningfully in these decisions.

While the alleged basis for the actions was financial, the institution did not declare financial exigency, and, because the administration failed to provide financial data in support of that contention and because the college received significant federal pandemic funding, the investigating committee's report deemed the administration's contention that the COVID-19 pandemic necessitated program eliminations and appointment terminations to be largely pretextual.

Although the investigation focused on evident violations of standards of shared governance, the investigating committee stated that it felt compelled to observe that the actions of the Medaille board and administration had deleterious effects on the climate for academic freedom at the college. In particular, it noted the alarming decision to abandon the tenure system—the most critical line of defense for academic

freedom—based on the unsubstantiated claim that an alleged financial crisis made such an action necessary.

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

The Committee on College and University Governance therefore recommends to the Association’s governing Council that Medaille College be added to the Association’s list of institutions sanctioned for substantial noncompliance with standards of academic government.

*National University (California).* With the COVID-19 pandemic underway, as described in the report of the investigating committee, the president of National University announced at a virtual “town hall” meeting “the need to take quick and decisive action.” That action, taken unilaterally by the administration, with the concurrence of the institution’s governing board, included the abrogation of all faculty contracts in order to issue new ones, the suspension of the university’s *Faculty Policies*, the issuance of the administration’s own version of the faculty handbook, and the replacement of existing faculty governance bodies with a new governance structure.

Additional action taken by the administration and governing board in flagrant disregard of widely accepted standards of academic governance included making unilateral changes to the governance structure of the university without respecting the primacy of the faculty’s judgment in relation to general educational policy; merging, in March 2020, all eleven National University system libraries into one central library absent meaningful consultation with the faculty or the library staff; closing several significant academic centers throughout California and in Nevada without taking faculty recommendations into account; and preempting the faculty’s primary responsibility regarding the discontinuation of academic programs by expediting the decision-making process.

Whatever the reasons for the board and administration’s contravention of norms and standards of

academic governance, the report found, they did *not* include significant financial difficulty.

The report concluded that the actions by the governing board and administration involved a trinity of egregious violations of widely accepted governance standards: their abrogation of faculty contracts, their suspension of the institution’s *Faculty Policies*, and their unilateral replacement of an elected faculty senate with a university senate. As a result of these actions, the report further concluded, traditional academic governance at the university has been plunged into an abysmal condition. The investigating committee found that the governing board and administration of National University had thoroughly violated AAUP-supported principles and practices of academic governance, as set forth in the *Statement on Government of Colleges and Universities* and derivative AAUP policy documents.

The Committee on College and University Governance recommends to the AAUP’s governing Council that National University be added to the Association’s list of institutions sanctioned for substantial noncompliance with standards of academic government.

*Wittenberg University (Ohio).* The investigating committee’s report details three drastic steps that the governing board of Wittenberg University took, before and during the COVID-19 pandemic, without meaningfully consulting the faculty. The first was its establishment of an ad hoc Academic Program Futures Committee (APFC) consisting of administratively selected faculty members to plan, largely in secret, further academic program reductions than those already approved by the Educational Policies Committee (EPC), an elected faculty body. The second step came in May 2020, two months into the COVID-19 crisis, when the board approved a resolution “suspending any faculty manual provisions that might delay the actions needed to achieve financial sustainability.” Finally, in June, the board announced to the faculty its unanimous approval of APFC recommendations to discontinue eight programs and departments and to eliminate two tenured faculty positions in geology and Japanese. The report describes how the faculty and the Wittenberg AAUP chapter protested each step along the way.

The report concluded that the Wittenberg governing board and administration acted unilaterally in initiating a program-review process that circumvented established faculty governance policies and

procedures; in suspending unspecified sections of the faculty manual that would have interfered with their plans to close programs and eliminate faculty appointments; and in discontinuing eight programs and terminating two tenured appointments, with devastating consequences for academic governance at the institution. The investigating committee found that, in so acting, the board and the administration contravened fundamental principles and standards of academic governance enunciated in the *Statement on Government of Colleges and Universities*. The committee also found that these same actions severely weakened the institution of tenure at the institution and thus degraded the climate for academic freedom.

The report observed that the actions taken by the board and the administration had severe ramifications for shared governance and academic freedom. Faculty members with whom the committee spoke stated that shared governance was “nonexistent” and that even tenured faculty members—especially those in comparatively low-enrolled programs—feared losing their jobs. In answer to a question about the effects of the terminations of two tenured colleagues’ positions, one interviewee simply said: “Tenure doesn’t mean anything here. Academic freedom is gone.”

The Committee on College and University Governance recommends to the AAUP’s governing Council that Wittenberg University be added to the Association’s list of institutions sanctioned for substantial noncompliance with standards of academic government.

### Other Cases

The Committee on College and University Governance adopted the following statements regarding the other two cases and presented them as informational items to the Council at its June meeting. The Council voted to refer the University of Akron case back to the Committee on College and University Governance for its reconsideration in light of developments subsequent to the committee’s May meeting.

*University of Akron.* The report of the investigating committee concerns actions by the governing board and administration of the University of Akron to terminate the appointments of ninety-seven full-time faculty members, in July 2020, after invoking the “force majeure” provision in the collective bargaining agreement and thus nullifying the reduction-in-force provisions in the collective bargaining agreement, a decision later upheld in arbitration.

While the investigating committee did not contest the administration’s adherence to the collective bargaining agreement or the legality of the decision to invoke force majeure, it reiterated the AAUP’s longstanding opposition to “force majeure,” “act of God,” “extraordinary circumstances,” and similar escape-clause provisions in faculty handbooks and collective bargaining agreements as unnecessary and pernicious. The investigating committee noted that such provisions, when invoked, obviate AAUP-supported principles and standards by permitting a governing board and administration facing a real or ostensible financial emergency to nullify any existing policies that involve the faculty in decision-making during a layoff and that protect academic freedom, tenure, and due process.

The committee found that the governing board and administration, by invoking force majeure and terminating the appointments of almost one hundred full-time faculty members, disregarded the governance standards set forth in the *Statement on Government of College and Universities* and provisions of Regulation 4c of the *Recommended Institutional Regulations on Academic Freedom and Tenure*: no elected faculty governance body participated in the decision that led to the decision to terminate faculty appointments; the faculty did not have an opportunity to make a written assessment of the institution’s financial condition; the faculty did not participate in deciding whether, and if so where, appointment terminations would occur; faculty members in affected programs were not provided at least thirty days to respond to notice that their programs were to be discontinued; affected faculty members were not afforded a faculty hearing to contest the terminations; the administration did not take tenured status into account in choosing appointments for termination; the administration did not make every effort to find other suitable positions within the university for affected faculty members; and the administration did not provide affected faculty members with severance salary.

In response to the AAUP staff’s request for comment on the draft text of this report, the UA administration and Akron-AAUP submitted a joint letter announcing “significant developments at the University of Akron” that, the letter states, “bear on the contents” of this report.

The first development was the ratification of a new six-year collective bargaining agreement between the chapter and the administration. However, as the investigating committee’s report notes, the new collective

bargaining agreement, while removing the phrase “such as force majeure” from its retrenchment article, retains the rest of the language, which permits the administration—when the board and administration deem circumstances to be “catastrophic”—to set aside the collective bargaining agreement’s already weak provisions governing termination of appointments because of financial exigency.

The second development was the successful negotiation of a memorandum of understanding (MOU) between the chapter and administration on shared governance. “We believe,” the joint letter concludes, that “this MOU represents a good faith effort to set the University on the right course, which we believe can only be achieved through meaningful shared governance.”

The MOU includes procedures designed to ensure that Akron-AAUP is regularly provided with the same financial information provided to the board of trustees; that the faculty senate, through its Program Review Committee, plays a significant role in decisions on resource allocation to existing and new academic programs; that the faculty in academic units subject to reorganization will be allowed to vote on proposals for such changes; and that these proposals are subject to further review and action by the senate’s Academic Policies Committee and the entire faculty senate.

In the light of these stated improvements in conditions for academic governance at the University of Akron, attested to by the UA administration and by Akron-AAUP, the Committee on College and University Governance makes no recommendation to the AAUP’s governing Council regarding the imposition of a sanction on the institution. However, the committee remains deeply concerned about the continued presence in the collective bargaining agreement of language equivalent to the technically deleted “force majeure.”

*Illinois Wesleyan University.* The report of the investigating committee concerns the process leading to the action of Illinois Wesleyan University’s board of trustees, in July 2020, to discontinue programs in anthropology, French, Italian, and religious studies and to issue notice of appointment terminations to nine tenured faculty members in those programs. In taking this action, the governing board and the administration claimed to have adhered to Regulation 4d, “Discontinuance of Program or Department for Educational Reasons,” of the AAUP’s *Recommended Institutional Regulations on Academic Freedom and*

*Tenure.* The IWU faculty, however, informed the Association’s staff that the process of program review was marred by repeated departures on the part of the administration and governing board, not only from Regulation 4d but also from AAUP-supported standards of academic governance—departures which the faculty had formally protested, to no avail, on numerous occasions. Chief among the faculty’s complaints were that the administratively initiated process did not employ existing faculty governance bodies and procedures; that the faculty’s participation was based on the administration’s assurance that the process would not eventuate in the termination of tenured appointments; that rather than educational considerations guiding the process, as the board and administration had initially stated, financial considerations ended up being paramount; that the governing board rejected the faculty’s final recommendations on program reductions and closures and substituted its own, without providing the faculty with a compelling explanation for doing so; and that the administration, despite having invoked Regulation 4d, failed to make “every effort,” as that regulation requires, to find another suitable position within the institution for the one affected faculty member whose situation remained unresolved.

While acknowledging the complexity of the challenges confronting the IWU administration and board, the investigating committee found that, in taking unilateral action to discontinue four academic programs and terminate nine tenured appointments, they had departed from AAUP-recommended principles and standards. In disregard of the *Statement on Government of Colleges and Universities*, the committee specifically found, the administration and governing board failed to engage in adequate communication regarding the possibility that the program review might result in appointment terminations; failed to honor existing provisions in the faculty handbook designed to preserve the faculty’s “primary responsibility” for curricular decision-making; imposed their own program-review process; and declined to provide “compelling reasons stated in detail” for rejecting the final curricular recommendations of the committee they had created.

On April 24, the IWU faculty hearing panel considering the grievance of the single remaining displaced faculty member issued a report sustaining the faculty member’s allegations that (a) the administration and governing board did not follow faculty handbook procedures in discontinuing his department and (b) the administration did not make every effort to find

him another suitable position within the institution. The hearing panel's report has gone to the board of trustees for final disposition. According to the faculty handbook, "Acceptance of the Hearing Panel's recommendation would normally be expected."

In view of this pending action, the Committee on College and University Governance will delay until fall 2021 its consideration of whether to recommend to the AAUP's governing Council that Illinois Wesleyan University be added to the Association's list of institutions sanctioned for substantial noncompliance with standards of academic government.

### **Shared Governance Conference**

The 2021 Shared Governance Conference was held online between June 14 and 18 and included three plenary sessions, two workshops, and fifteen paper presentations. On behalf of the governance committee, I thank AAUP president Irene Mulvey and AAUP members Marcus Alfred, Michael Bérubé, Emily Houh, and Glinda Rawls as well as staff members Mark Criley, Marlan Maralit, Gregory Scholtz, and Hans-Joerg Tiede for delivering the plenary sessions and leading the workshops. Thanks are also due to governance committee members Allison Buskirk-Cohen, Shawn Gilmore, Pippa Holloway, Julia Schleck, and Brian Turner for reviewing the paper proposals and moderating the five paper panels.

### **Conclusion**

I thank the members of the Committee on College and University Governance for their outstanding work on two major projects this year and, more generally, for their support of the principles of academic governance. I also thank the staff of the Department of Academic Freedom, Tenure, and Governance for their extraordinary efforts in support of the multi-institution COVID-19 governance investigation, which was unprecedented in the Association's 106-year history. I owe special thanks and recognition to Hans-Joerg Tiede, whose service as staff to the governance committee recently concluded after more than five years. In the process of working closely together on many projects since 2016, he has expertly guided me, patiently humored me, and tirelessly supported and promoted the work of the committee. ■

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