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# Academic Freedom and Tenure: University System of Georgia<sup>1</sup>

(DECEMBER 2021)

This report, prepared by the Association's staff, concerns the action taken on October 13, 2021, by the Board of Regents of the University System of Georgia to remove the procedural protections of tenure from the system's post-tenure review policy.

## I. The University System of Georgia

The Georgia legislature created the University System of Georgia (USG) in 1931, thereby uniting the state's previously independent public colleges and universities under the control of a systemwide governing board—the University System of Georgia board of regents.<sup>2</sup> The USG today comprises twenty-

six institutions of higher education with a combined student enrollment of around 340,000 and a tenure-track and tenured faculty numbering about 8,400. Each constituent institution has its own advisory board, president, and faculty senate.<sup>3</sup> The current USG board of regents consists of nineteen gubernatorially appointed members, fourteen of whom represent the state's fourteen congressional districts and five of whom are at-large representatives. The chair is Mr. Sachin Shailendra, president of an Atlanta construction firm. Most of the current regents, all of whom were appointed by one of the last three Republican governors, are business executives and major contributors to key state GOP politicians. The chief administrative and executive officer of the USG is the chancellor, one of the highest paid positions in state government.<sup>4</sup> In January 2021, Chancellor Steven Wrigley announced his retirement, effective July 1, and

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1. This report was written by the Association's staff based on available information. In accordance with Association practice, the text was submitted to Committee A on Academic Freedom and Tenure. With the approval of Committee A, it was then sent to the administration and board of regents of the University System of Georgia, to the Faculty Council of the University System of Georgia, to the Georgia Conference of the AAUP, and to other concerned parties. This final report was prepared for publication in light of the responses received.

2. The USG classifies its constituent institutions as *research universities*: Augusta University, Georgia Institute of Technology, Georgia State University, and University of Georgia; *comprehensive universities*: Georgia Southern University, Kennesaw State University, University of West Georgia, and Valdosta State University; *state universities*: Albany State University, Clayton State University, Columbus State University, Fort Valley State University, Georgia College and State University, Georgia Southwestern State University, Middle Georgia State University, Savannah State University, and University of North Georgia; and *state colleges*: Abraham Baldwin Agricultural College, Atlanta Metropolitan State College, College of Coastal Georgia, Dalton State College, East Georgia State College, Georgia Gwinnett College, Georgia Highlands

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College, Gordon State College, and South Georgia State College. Georgia Gwinnett College, founded in 2006, is the only non-tenure-granting institution in the system.

3. In commenting on the draft text of this report, Professor Barbara Biesecker, chair of the executive committee of the University of Georgia's university council, noted that "UGA is an outlier in the system with respect to its structure of faculty governance: we have no university-wide faculty senate. Instead, we have the University Council (composed of elected faculty, staff, and student representatives, plus multiple ex officio administrators, and chaired by the president) and the University Council Executive Committee (for which I currently serve as chair)."

4. In fiscal year 2020, Chancellor Wrigley's salary was \$523,950; Governor Brian P. Kemp earned \$175,000 that same year. Acting Chancellor MacCartney will earn \$438,000 a year.

the board almost immediately launched a search for a successor led by a search committee consisting of six board members and guided by an executive search firm. The regents suspended the search in April following internal controversy over the candidacy of Mr. Sonny Perdue, former two-term Georgia governor and secretary of agriculture under President Donald Trump, and in June appointed Ms. Teresa MacCartney acting chancellor.<sup>5</sup>

Ms. MacCartney, who earned a bachelor's degree in mathematics and a master's degree in public administration at Georgia Southern University, was formerly the system's executive vice chancellor for administration. Prior to serving in that role, she had been the state's chief financial officer and the director of Governor Nathan Deal's office of planning and budget. The executive vice chancellor for academic affairs and chief academic officer for the system is Dr. Tristan Denley, whom Chancellor Wrigley appointed to that role in 2017. Dr. Denley, who earned his bachelor's and doctoral degrees in mathematics at universities in his native England, had held an appointment as assistant professor of mathematics at the University of Mississippi before undertaking several administrative roles—most recently that of vice chancellor for academic affairs with the Tennessee Board of Regents, which oversees thirteen community colleges and twenty-seven colleges of applied technology.

## II. Revisions to the USG Post-tenure Review Policy

On September 18, 2020, then chancellor Wrigley appointed a post-tenure review working group “to review and recommend updates to board policy and campus practices to ensure all faculty remain productive throughout their careers.” The fourteen members of the working group included two members of the board of regents; six USG administrators, including

Ms. MacCartney (then executive vice chancellor for administration) and Dr. Denley; five full professors, several of whom appear to have had significant concurrent administrative responsibilities; and the provost and senior vice president for academic affairs at Kennesaw State University, Dr. Kathy Schwaig, who served as chair.

The working group delivered its six-page report to Chancellor Wrigley on June 28, 2021, two days before his retirement. According to its executive summary, the working group had met virtually during the previous ten months to review and discuss existing board policy on post-tenure review as well as “books, journal articles, and news articles” on the subject. The group also administered two surveys—one of the provosts and another of additional administrators and faculty members at the twenty-five tenure-granting institutions in the system. Based on the survey results, the working group found “positive and negative aspects of the existing PTR [post-tenure review] process.” On the one hand, it provided faculty members with the opportunity, based on peer evaluation, to “reflect on the previous five years and compare their performance to their plans and goals.” On the other hand, it had “substantial direct and indirect costs in terms of faculty, staff, and administrative time,” including what some surveyed faculty members perceived as “onerous” paperwork requirements.

But the basic problem, according to the report, was that the existing post-tenure review process “identified and remediated” “very few low-performing faculty members.” As a result, the report suggested, a reformed post-tenure review process in the USG system, while providing “a formative assessment of the faculty member's work and career,” should focus on being “sufficiently rigorous to bring to light areas in which a faculty member's performance should improve.” Among the report's dozens of recommendations, those most aligned with that purpose were recommendations that (1) “an unfavorable PTR shall result” in the imposition of a performance improvement plan (PIP) created by the faculty member and his or her dean and department chair and (2) failure to complete a PIP successfully will result in the dean's taking “appropriate remedial action or discipline,” which may include “suspension of pay, salary reduction, and revocation of tenure and dismissal.”

It is worth noting, however, that the working group's report does not recommend any specific

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5. See Eric Sturgis and Greg Bluestein, “Georgia Chancellor Search Process Slowed by Confusion, Split over Perdue,” *Atlanta Journal-Constitution*, June 4, 2021, <https://www.ajc.com/education/georgia-chancellor-search-process-slowed-by-confusion-split-over-perdue/WK3I2EHHJVFFRAZJ5LFD4MSNH4/>. For a perspective on the USG board of regents historically serving political rather than educational ends, see Scott Nelson, “From Segregation to COVID, Regents Served Governors, Not Students,” *Atlanta Journal-Constitution*, September 9, 2021, <https://www.ajc.com/education/get-schooled-blog/historian-from-segregation-to-covid-regents-served-governors-not-students/XKDIUDIBHFBYLMWD3TV6OA26PY/>.

revisions to the existing policy language. Even more notable is that it says nothing about “revocation of tenure and dismissal” being effected without affording faculty members a dismissal procedure.

Less than two months later, at the August 10 board meeting, Executive Vice Chancellor Denley presented the working group’s report to the board, which, according to the meeting’s minutes, he indicated would result in the regents’ enacting “system-level guidelines and standards” on post-tenure review “to ensure consistency across all campuses.”

At the September 9 board meeting, Dr. Denley introduced a set of proposed revisions of the post-tenure review and associated policies, evidently authored by him, to the board’s Committee on Academic Affairs as an “information item.”<sup>6</sup> The committee’s agenda states that Dr. Denley “will present . . . the proposed revisions to the Board of Regents . . . for approval” at its October 12–13 meeting. Neither the agenda nor the minutes indicate that the committee discussed the proposed changes, much less made further revisions to them.

At the October meeting, the board, on the recommendation of Dr. Denley and the Committee on Academic Affairs and with no discussion, unanimously approved the proposed revisions to the system’s post-tenure review policy in substantially the same form as presented on September 9. On October 13, Acting Chancellor MacCartney notified the presidents of the system’s tenure-granting institutions that the board had so acted and that the changes were to take effect immediately.

The revisions adopted by the board of regents were to eight board policies governing faculty evaluation generally, post-tenure review, and “discipline and removal of faculty members.”<sup>7</sup> The most extensive changes expand board policy 8.3.5.4, Post Tenure Review, from one paragraph

to nine. Two unusual and, to some, controversial revisions—in addition to those that occasioned this report—were (1) the addition of “involvement in student success activities” to teaching, scholarship, and service as a separate criterion in all faculty evaluations and (2) a provision that would transfer the authority to award tenure from an institution’s president to the USG board of regents if the regents conclude that the institution’s faculty evaluation process is insufficiently “rigorous.”

The focus of this report, however, is on two amendments that remove the due-process protections of tenure from the post-tenure review policy. The first adds the following sentence to 8.3.5.4, Post Tenure Review: “The institution’s imposition of such remedial action will not be governed by or [be] subject to the Board Policy on Grounds for Removal or Procedures for Dismissal.” The second adds a nearly identical sentence to 8.3.9, Discipline and Removal of Faculty Members: “Remedial actions taken as part of the post-tenure review process shall not be governed by [board] policies on Grounds for Removal and Procedures for Dismissal, but rather shall be governed by the Board Policy on Post Tenure Review.” Potential “remedial actions” include dismissal and other severe sanctions. As far as the AAUP is aware, no USG official has provided a rationale for these two changes; in fact, as the exchanges in the next section demonstrate, the system’s chief executive officer has not even acknowledged the import of these changes.

### **III. The Association’s Involvement**

The day after the September 9 board meeting at which Executive Vice Chancellor Denley first presented the proposed amendments, alarmed Georgia faculty members contacted the AAUP to alert its staff to the pending action, with one of them writing, “It looks like tenure will be eliminated under proposed changes by the Georgia Board of Regents . . . in direct violation of AAUP principles.”

At the request of the Georgia state conference of the AAUP, the Association’s staff prepared a letter advising conference leadership on the extent to which the proposed amendments would violate AAUP-recommended principles and procedural standards on academic freedom and tenure. The staff’s letter, dated September 24, characterized the above-noted addition to 8.3.5.4, Post Tenure Review, as “extraordinary.” “While it cannot be said to do away with tenure entirely,” the letter stated, “it certainly moves in that direction by making it possible to dismiss a tenured

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6. The Committee on Academic Affairs consists of eight board members. It is chaired by Ms. Erin Hames, JD, whose board biography notes that she is headmaster of Heritage Preparatory School, “a classical Christian school in Atlanta.” Previous roles include having been deputy chief of staff for Governor Nathan Deal and, prior to that, policy director for Governor Sonny Perdue.

7. The eight policies are 8.3.5.1, Faculty [Evaluation]; 8.3.5.4, Post Tenure Review; 8.3.6, Criteria for Promotion; 8.3.6.1, Minimum [Promotion Criteria] for All Institutions in All Professorial Ranks; 8.3.7.1, Faculty [Excellence in Teaching]; 8.3.7.2, Tenure Requirements; 8.3.7.3, Criteria for Tenure; and 8.3.9, Discipline and Removal of Faculty Members.

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.” The staff’s letter continued, “The AAUP regards an action to terminate the services of a tenured faculty member” without prior affordance of academic due process as a “summary dismissal.”

Conference president Matthew Boedy immediately shared the AAUP’s advisory letter with Acting Chancellor MacCartney, who responded to Professor Boedy by letter of October 1. She noted that “the ultimate possibility of tenure revocation [and] separation for faculty whose performance is consistently poor” had always been an element of the post-tenure review policy. The “new policy language,” she continued, merely clarified “the process that could lead to that outcome.” That process, she added, though now distinct from that of the previously applicable dismissal procedure, “involves review by a body of peers . . . and provides for appeal.” It was, therefore, “far from summary dismissal.”

On October 11, Association officials learned that the post-tenure review policy revisions remained on the agenda for the October 12–13 board meeting with a recommendation for passage. The next day AAUP president Irene Mulvey issued a brief statement warning that if the board voted to approve the proposed statements, “tenure and the academic freedom it is designed to protect will be severely compromised at the twenty-five tenure-granting colleges and universities in the system” and that the AAUP would be compelled to launch an investigation, as it had in 1974 when it investigated and censured the governing board of the Virginia Community College System for abolishing tenure.<sup>8</sup>

On October 21, the AAUP’s staff wrote Acting Chancellor MacCartney to inform her that the Association’s executive director had authorized an investigation “into the recent action of the Board of Regents of the University System of Georgia to remove from the system’s post-tenure review policy the

due-process protections that normally accompany tenured status.”

In her reply of October 22, the acting chancellor wrote that, while she “appreciate[d]” the AAUP’s letter, she was compelled “to correct the foundation upon which” the Association had launched this investigation. “Due process,” she stated, “is and will be a central feature of the policy updates on post-tenure review.” In illustration, she quoted the nine new paragraphs of board policy 8.3.5.4, Post Tenure Review, highlighting the following provisions:

Each institution’s policies shall be developed in consultation with the institution’s faculty and shall include appropriate due-process mechanisms.

An aggrieved faculty member may seek discretionary review of the institution’s final decision pursuant to the Board Policy on Applications for Discretionary Review.

The letter concluded, “I appreciate your concern related to our recent policy updates; however, it will not be necessary for an investigation into the removal of due process as it clearly has not been removed.”

Responding by letter of October 25, the AAUP’s staff explained at length the Association’s understanding of academic due process, pointing out that nothing in the current policy came close to approximating it. “The plain fact,” the staff wrote, “is that the regents’ revisions to the post-tenure review policy have severed it from academic due process as the AAUP understands it. . . . [T]he 6,000 tenured faculty members in the University System of Georgia no longer enjoy the protections of tenure, which the AAUP considers as necessary for academic freedom. We cannot overemphasize the gravity, scope, and unprecedented nature of this action. As far as we are aware, no other public university system has stripped the due-process protections of tenure from its post-tenure review policy.” As a result, the staff’s letter continued, “an investigation is all too necessary.” Nevertheless, the staff’s letter added, an investigation might still be avoided if the regents were to “restore the applicability of Board Policy 8.3.9.2[, Procedures for Dismissal,] to post-tenure review”—a restoration that could be largely accomplished simply by “removing two ‘nots.’” The letter concluded with the assurance that the AAUP’s executive director “would welcome a resolution that would obviate the need for a published report and potential AAUP censure.”

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8. “AAUP President Warns of Investigation, Potential Censure, If Tenure Is Gutted in the University System of Georgia,” last modified October 13, 2021, <https://www.aaup.org/news/aaup-president-warns-investigation-potential-censure-if-tenure-gutted-university-system-georgia>. (The AAUP removed the Virginia Community College System from its list of censured administrations in 2003 after the system restored the academic due-process protections that accompany tenure.)

The acting chancellor's reply came on November 2. "I want to reiterate" she wrote, "that due process is and will remain a core tenet of the policy updates to the University of Georgia's post-tenure review process." In support of this assertion, she referred to potential future refinements to the policy that would provide faculty members undergoing post-tenure review with "ongoing notice" of unsatisfactory performance, "multiple opportunities to develop and remediate" performance deficiencies, and "multiple opportunities to be heard . . . by a faculty post-tenure review committee."

Responding on November 5, the staff acknowledged that while these prospective refinements to the new post-tenure review policy might well improve it, "they have nothing to do with academic due process." The staff's letter continued, "As we apparently failed to make clear in our previous letter, academic due process is the affordance of an adjudicative hearing of record before a faculty body in which the administration bears the burden of demonstrating adequate cause for dismissal. The regents' changes erased this essential procedural element from the USG's post-tenure review policy and by doing so severely damaged tenure and academic freedom in Georgia's public institutions of higher education."

#### IV. The Issues

The following sections discuss the central issues of Association concern posed by this case: tenure and academic freedom, post-tenure review, and academic governance.

##### A. Tenure and Academic Freedom

The 1940 *Statement of Principles on Academic Freedom and Tenure*—jointly formulated by the AAUP and the Association of American Colleges and Universities (AAC&U), endorsed by more than 250 scholarly societies and higher education organizations, and incorporated into the institutional regulations of hundreds of colleges and universities—articulates the consensus in American higher education on the significance of academic freedom and tenure. It asserts that academic freedom and tenure serve the common good, not the interests of professors or the institutions they serve. It further asserts that because "the common good depends upon the free search for truth and its free expression," those who teach, conduct research, and participate in academic decision-making require academic freedom to do

so with the utmost effectiveness.<sup>9</sup> The purpose of the security that tenure provides is to protect academic freedom, making both academic freedom and tenure "indispensable to the success of an institution in fulfilling its obligations to its students and to society."

The concept of tenure is variously interpreted. But as the term is employed in the 1940 *Statement* and derivative AAUP policy documents, tenure is an indefinite (in contrast to a fixed-term) appointment that can be "terminated only for adequate cause."<sup>10</sup> To terminate a tenured appointment for adequate cause—that is, for a lack of professional fitness—an administration must first demonstrate to a duly constituted faculty body in an adjudicative hearing of record that the subject faculty member's professional conduct or performance warrants dismissal.

AAUP-supported standards governing such a hearing are set forth in the 1958 *Statement on Procedural Standards in Faculty Dismissal Proceedings* (also the joint formulation of the AAUP and AAC&U) and in Regulation 5, Dismissal Procedures, of the AAUP's *Recommended Institutional Regulations on Academic Freedom and Tenure*, from which USG board policy 8.3.9.2, Procedures for Dismissal, is derived virtually verbatim. Under these standards, essential elements of a dismissal hearing are

- a written statement of specific charges, framed with reasonable particularity,
- a pretermination hearing of record before an elected faculty body,
- the burden of proof in demonstrating adequate cause for dismissal resting with the administration,
- the faculty member's right to present evidence and cross-examine witnesses,
- a decision based on the evidence in the record of the hearing, and

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9. USG board policy 6.5, for example, declares, "As public institutions of higher education, USG institutions must promote open ideas and academic freedom on their campuses."

10. AAUP policy acknowledges that institutions can also terminate tenure on two bases unrelated to professional fitness—"under extraordinary circumstances" because of a "demonstrably bona fide financial exigency" and because of a "bona fide formal discontinuance of a program or department of instruction" based on educational considerations, as determined primarily by the faculty (Regulation 4 of the *Recommended Institutional Regulations on Academic Freedom and Tenure*).



- the faculty member’s right to appeal to the governing board.

The AAUP regards a procedure containing these elements as the basic academic due process required when an administration seeks to dismiss a tenured faculty member for adequate cause. As previously noted, these elements, and more, are present in USG board policy 8.3.9.2, Procedures for Dismissal.

From the AAUP’s perspective, colleges and universities whose regulations do not afford such a process to postprobationary faculty members dismissed for cause do not have tenure—or have it in name only.

Until October 13, the USG board policy on post-tenure review did afford academic due process to faculty members subject to dismissal for adequate cause. Unfortunately, the changes enacted that day uncoupled board policy 8.3.9.2, Procedures for Dismissal, from post-tenure review. As noted earlier, adding the following two sentences to board policy deleted academic due process from the USG post-tenure review policy:

The institution’s imposition of such remedial action will not be governed by or [be] subject to the Board Policy on Grounds for Removal or Procedures for Dismissal. (8.3.5.4, Post Tenure Review)

Remedial actions taken as part of the post tenure review process shall not be governed by [Board] policies on Grounds for Removal and Procedures for Dismissal, but rather shall be governed by the Board Policy on Post Tenure Review. (8.3.9, Discipline and Removal of Faculty Members)

As a result, under the revised post-tenure review policy, when a tenured faculty member fails to fulfill the terms of a performance improvement plan—as determined primarily by a chair or dean, not by a body of faculty peers—imposed after one “unfavorable” post-tenure review, the institution’s president “will take appropriate remedial action,” which “may include . . . revocation of tenure and separation from employment”—all without affordance of the academic due process that defines tenure.

Board policy 8.3.9.2, Procedures for Dismissal, now applies to dismissals on grounds of misconduct only, or, to use the term employed by Acting Chancellor MacCartney in her October 1 letter to

Professor Boedy, “malfeasance.” As a result, while the USG policy still affords academic due process to tenured faculty members being dismissed for “moral turpitude,” violation of board policies, “conviction . . . of any criminal drug offense,” and the like, it no longer affords that protection to tenured faculty members whose effectiveness as teachers and researchers has come under scrutiny.

Potentially intensifying the threat to the academic freedom of all faculty members, not only those with tenure, is the introduction of a fourth faculty evaluation criterion—in addition to the traditional trinity of teaching, scholarship, and service. That new criterion is “involvement in student success activities,” and it will now apply to all faculty evaluations. Though undefined in board policy, student success is a critical component of the USG “Strategic Plan 2024,” which equates it with “degree completion.”<sup>11</sup> The danger in such a criterion is the possibility that a faculty member’s teaching performance will be evaluated significantly by how it contributes to student

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11. In an email message to Professor Boedy, Executive Vice Chancellor Denley provided the following elaboration: “The intention for this ‘student success’ category is to include ways in which faculty engage with students both inside and outside the classroom to materially impact student learning and engagement other than through instruction, as well as faculty involvement in established strategies that improve student graduation metrics. This includes things such as effective advising and mentoring, undergraduate and graduate research and other forms of experiential learning, the development of student success tools and curricular materials, strategies to improve student career success, and involvement in faculty development activities such as Centers for Teaching and Learning, Chancellor’s Learning Scholars, and Faculty Learning Communities. The final list that falls within this new category, and how they will be measured, will be established by each campus.”

Faculty statements objecting to the imposition of this new criterion included the following section from an October 4 email message addressed to Acting Chancellor MacCartney from the chair of the faculty executive board and the secretary of the faculty at Georgia Institute of Technology: “As the study of student success develops, we are learning that many of the factors that can influence [it]—like financial issues, advising, and internship availability—are outside of the classrooms and labs that faculty run. At Georgia Tech, these factors are not delegated to or controlled by individual faculty members”; they are “the purview of administrative staff. We can and should hold institutions, and their units, accountable for student success. Faculty believe that student success is important, but it is not logical or fair to hold them individually accountable for it. Georgia Tech faculty request the removal of student success as an evaluative metric for individual faculty reviews.”

retention as indicated by such measures as grade distribution, course-completion rates, and student evaluations—indicators that are open to varied interpretations and that may or may not reflect the actual quality of teaching and learning. That the policy entrusts such interpretation largely to administrative officers only increases the threat.

In attempting to refute the AAUP's observation that the regents' changes erased academic due process from the system's post-tenure review policy, the acting chancellor, as noted earlier, cited the following provisions in board policy 8.3.5.4 as evidence of "due process": (1) "Each institution's policies shall be developed in consultation with the institution's faculty and shall include appropriate due-process mechanisms." (2) "An aggrieved faculty member may seek discretionary review of the institution's final decision pursuant to the Board Policy on Applications for Discretionary Review."

In her November 2 letter to the AAUP's staff, Acting Chancellor MacCartney further elaborated on the "appropriate due-process mechanisms" promised in the first provision. Apparently confounding peer review and mere process with academic due process, she wrote that each institution's yet-to-be-developed "guidelines and handbook language" on post-tenure review would include "ongoing notice" of unsatisfactory performance, "multiple opportunities to develop and remediate" performance deficiencies, and "multiple opportunities to be heard . . . by a faculty post-tenure review committee." In response, the staff pointed out that "as laudable as these prospective enhancements might be, they are not what the AAUP means by academic due process."

The second provision, on "discretionary review," also bears no resemblance to academic due process. Under board policy 6.26, Application for Discretionary Review, any USG system student or employee is eligible to file an appeal to the system's office of legal affairs. Unfortunately, as its title suggests, review is not automatic but granted only at the "sound discretion of" that office and only "if the record suggests [that] a miscarriage of justice" or a "detrimental and system-wide" impact will otherwise result. The review committee consists of legal office administrators or their designees, and all decisions of the committee and the office of legal affairs are final and binding.

A fitting conclusion for this section of the report is a sentence from an oft-reprinted essay on academic tenure by a distinguished law professor and former chair of Committee A on Academic Freedom and

Tenure: "Were a system of post-tenure review devised to make a negative evaluation 'cause' for dismissal, it would, in practical effect, substitute periodic evaluation for a dismissal hearing and would be indistinguishable from the abolition of tenure."<sup>12</sup>

## B. Post-tenure Review

In 1983, Committee A took the position that the potential benefits of post-tenure review (defined as "periodic formal institutional evaluation of each post-probationary faculty member") were outweighed by the potential costs in time and money, "dampening of creativity and of collegial relationships," and threats to academic freedom.<sup>13</sup> In 1999, having observed that more and more colleges and universities had adopted post-tenure review policies, Committee A issued *Post-tenure Review: An AAUP Response*.<sup>14</sup> This report insisted on "minimum standards" for post-tenure review based on the following principles:

- Post-tenure review must be developed and carried out by faculty.
- Post-tenure review must be conducted according to standards that protect academic freedom and the quality of education.
- 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).

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12. Matthew W. Finkin, "The Tenure System," in *The Academic's Handbook*, eds. A. Leigh Deneef and Craufurd D. Goodwin, 3rd ed. (Durham, NC: Duke University Press, 2007), 165.

13. In "Statement of the Wingspread Conference on Evaluation of Tenured Faculty," *Academe* (November–December 1983), 14a.

14. Professor Finkin provides this account of the rise of post-tenure review: "The demand for a system of seemingly rigorous periodic evaluation of tenured faculty stemmed largely from concerns expressed in the halls of some state legislatures, faced with competing claims on scant public funds, about whether public college and university faculty were doing their all or had been lulled into semi-somnolence by having tenure. The demand was abetted at the time by members of the staff of the American Council on Education who called for the imposition of such systems despite the dubiety about them among leading academic administrators. That is, the proposal proceeded on the assumption that there is such slothfulness (or worse) in tenured ranks that a system of periodic evaluation would be necessary to ferret it out, which assumption more than remained to be seen" ("The Tenure System," 164–65).

The newly adopted USG post-tenure review policy implicates all three of these principles. It was not developed by the faculty, as shall be discussed in the next section; it cannot be conducted according to standards protective of academic freedom; and, most egregiously, by eradicating academic due process, it removes the burden of proof from the administration to demonstrate adequate cause when separating a tenured faculty member from service, placing it instead on the faculty member to argue that dismissal is unwarranted. In short, it violates the most important “minimum standard” set forth in *Post-tenure Review*: “The standard for dismissal or other severe sanction remains that of adequate cause, and the mere fact of successive negative reviews does not in any way diminish the obligation of the institution to show such cause in a separate forum before an appropriately constituted hearing body of peers convened for that purpose. . . . The faculty member must be afforded the full procedural safeguards set forth in the 1958 *Statement on Procedural Standards in Faculty Dismissal Proceedings* and the *Recommended Institutional Regulations on Academic Freedom and Tenure*.”

Many institutions of higher education today incorporate some system of post-tenure review.<sup>15</sup> However, to our knowledge, very few, if any, such institutions have post-tenure review policies that decouple academic due process from post-tenure review. More to the point, the AAUP is not aware of any public university system—other than the University System of Georgia—that has removed its dismissal-for-cause procedures from post-tenure review.

The report of the post-tenure review working group (which, as this report has noted, does not recommend removing academic due process from post-tenure review) itself indicates the uniqueness of what the USG regents have imposed. It lists fourteen “peer” university systems whose policies the working

group had scrutinized. Among the fourteen, the group identified eight systems that have no post-tenure review (Arizona Board of Regents, California State University, City University of New York, Minnesota State Colleges and Universities, State University of Florida, State University of New York, Tennessee Board of Regents, and University of California) and six systems that do (Texas A&M University, University of Maryland, University of North Carolina, University of Texas, University of Wisconsin, and Utah).

Unlike that of the USG, the post-tenure review policies of these last six peer systems explicitly state that faculty members whose post-tenure reviews eventuate in dismissal shall be afforded academic due process. The board of regents’ policy on post-tenure review for the University of Wisconsin system, for example, provides as follows: “Nothing in this policy shall be interpreted to alter or infringe upon existing tenure rights, . . . nor shall this policy diminish the important guarantees of academic freedom. Specifically, this policy does not supersede administrative rules providing for termination for cause set forth in Chapter UWS 4 of the Wisconsin Administrative Code.” The University of Maryland system post-tenure review policy reads, “This comprehensive review process may not be substituted for the UMS and institutional policies and procedures relating to the termination of tenured appointments, which are in no way amended by this policy.” The “performance review of tenured faculty” policy for the University of North Carolina system includes this provision: “Institutional policies for post-tenure review must not abrogate, in any way, the criteria and procedures for due process and for discharge or other disciplinary action established in Chapter VI of the Code of the University.”

In removing tenure protections from the USG post-tenure review policy, the board of regents has sharply differentiated the University System of Georgia from its peer systems, but not in a manner that is likely to enhance its academic excellence, its reputation, or its competitive advantage.

### C. Academic Governance

This report focuses on academic freedom and tenure. However, as the Association’s statement *On the Relationship of Faculty Governance to Academic Freedom* emphasizes, “Sound governance practice and the exercise of academic freedom are closely connected, arguably inextricably linked. While no governance system can serve to guarantee that

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15. The most recent study is Cheryl Sternman Rule, “After the Big Decision: Post-Tenure Review Analyzed,” in *Policies on Faculty Appointments: Standard Practices and Unusual Arrangements*, ed. Cathy Trower (Bolton, MA: Anker, 2000), which found that 46 percent of four-year institutions with a tenure system incorporated a system of post-tenure review. An AAUP Research Department survey on academic tenure, published online in May and printed in this issue of the *Bulletin*, contains updated statistics on the prevalence of post-tenure review in American higher education.



academic freedom will always prevail, an inadequate governance system—one in which the faculty is not accorded primacy in academic matters—compromises the conditions in which academic freedom is likely to thrive.” Given the inextricable connection between academic freedom and sound governance, the Association’s investigative reports on academic freedom and tenure normally include a discussion of the governance issues.

The AAUP’s 1966 *Statement on Government of Colleges and Universities*, developed in cooperation with the American Council on Education and the Association of Governing Boards of Universities and Colleges, outlines what has become the prevailing understanding of “shared governance” in American higher education, the principles of which are as applicable to university systems as they are to individual colleges and universities.<sup>16</sup> Because “the variety and complexity of the tasks performed by institutions of higher education produce an inescapable interdependence among governing board, administration, faculty, students, and others,” the *Statement on Government* calls for “adequate communication among these components and joint planning and effort.” Joint effort in academic decision-making (that is, “shared governance”) is embodied in two basic principles: “(1) important areas of action involve at one time or another the initiating capacity and decision-making participation of all the institutional components and (2) differences in the weight of each voice, from one point to the next, should be determined by reference to the responsibility of each component for the particular matter at hand.” In other words, shared governance means, first, that no major institutional decision should be reached without meaningfully involving the board, the administration, and the faculty (thus precluding

unilateral decision-making) and, second, that the amount of authority each constituent exercises in such decision-making derives from its responsibilities.

Under the *Statement on Government*, the governing board, “the final institutional authority,” has primary responsibility for general oversight and plays “a central role in relating the likely needs of the future to predictable resources”; the administration is primarily responsible for supervising the institution’s day-to-day operations, that is, “to plan, to organize, to direct, and to represent”; and the faculty exercises primary responsibility for “such fundamental areas as curriculum, subject matter and methods of instruction, research, faculty status, and those aspects of student life which relate to the educational process.” “Faculty status and related matters” encompass “appointments, reappointments, decisions not to reappoint, promotions, the granting of tenure, and dismissal.” This authority, which the governing board delegates to the faculty, acknowledges the faculty’s expert knowledge, which makes its “judgment . . . central to general educational policy.” In cooperating with the faculty in shared decision-making, the governing board “should undertake appropriate self-limitation,” and the administration should “ensure that faculty views, including dissenting views, are presented to the board.”

Because “faculty status and related matters” are the primary responsibility of the faculty, so is faculty evaluation in its various forms. That responsibility includes not only the implementation but also the development of institutional policies governing faculty performance reviews—especially those of postprobationary faculty members. In short, “post-tenure review must be developed and carried out by the faculty” (*Post-tenure Review: An AAUP Response*).

Under these principles and standards, the process for developing a policy such as post-tenure review would initially be entrusted to an independent faculty body—consisting largely if not exclusively of faculty members “selected by the faculty according to procedures determined by the faculty” (*Statement on Government*). Although administrative and trustee entities would play a significant role in developing such a policy, faculty bodies would play the primary role and hence would be meaningfully involved in shaping the final product. Under AAUP-supported governance standards, “meaningful involvement” is more than mere consultation or token invitations to provide “feedback” or “input.” It entails, among other

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16. “Traditionally, governing boards developed within the context of single-campus institutions. In more recent times, governing and coordinating boards have increasingly tended to develop at the multi-campus regional, systemwide, or statewide levels. As influential components of the academic community, these supra-campus bodies bear particular responsibility for protecting the autonomy of individual campuses or institutions under their jurisdiction and for implementing policies of shared responsibility. The American Association of University Professors regards the objectives and practices recommended in the *Statement on Government* as constituting equally appropriate guidelines for such supra-campus bodies, and looks toward continued development of practices that will facilitate application of such guidelines in this new context” (*Statement on Government*, footnote 3).

things, an opportunity for the appropriate faculty bodies independently to debate and vote on proposals. Adhering to such a process confers legitimacy on the final product, especially in the eyes of the faculty.

The AAUP has seen no evidence that the USG board of regents and its administration followed such a process in effecting changes to the post-tenure review policy in the University System of Georgia. On the contrary, the available information indicates that the new policy was sped to adoption in a manner that thoroughly disregarded normative standards of academic governance. As mentioned earlier, the committee charged with initiating the process, the post-tenure review working group, did not consist of elected faculty representatives; it consisted of two board members, five system officers, the provost at Kennesaw State, and five faculty members selected by Chancellor Wrigley. The proposal first unveiled at the September board meeting was not drafted by an appropriately constituted faculty body but, apparently, by Executive Vice Chancellor Denley. And at no point in the process did any faculty governance body have the opportunity to engage in full discussion and to vote on whether to approve the draft policy.

While it is true that the working group administered an initial survey of system faculty members and that Dr. Denley held meetings with various faculty groups to discuss the proposed amendments, such gestures do not constitute meaningful faculty involvement, nor do they approach what is commonly understood by shared governance, as the reaction of various USG faculty governance bodies makes evident.<sup>17</sup> Several such bodies formally registered their concerns, not only about the substance of the proposed changes to the post-tenure review policy but also about the faculty's marginalization in the process leading to its potential adoption.<sup>18</sup>

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17. Of these meetings, one faculty senate president wrote to his constituents, "Denley has been on tour to many USG schools to gather support for the new policy, rather than listening."

18. Besides the communications described in the following paragraphs in the text, these statements of concern included letters and petitions from the faculty senates of various institutions as well as from several AAUP bodies. Employing similar language, the petitions objected to the proposed changes, noted that the faculty and its representatives had not been afforded adequate opportunity to discuss and offer comment, and urged the regents to table further action on the proposed amendments in order to provide affected faculty members and the USG faculty council opportunity for review and response. A systemwide petition entitled "Open Letter to USG

In an October 12 letter to the USG administration and governing board, Professor Barbara Biesecker, chair of the Executive Committee of the University Council at the University of Georgia, the governance body for the USG's flagship institution, wrote urging the regents to "table" a vote on the post-tenure review amendment package. She recounts having attended that day by teleconference the meeting at which the board's academic affairs committee, after hearing "Dr. Denley's short presentation," unanimously approved the amendments with "no discussion." In that presentation, she wrote, the executive vice chancellor had "made no mention" either of the "hundreds" of faculty objections to the proposed changes or multiple requests from "faculty at UGA and our sister institutions" to postpone the vote to permit fuller faculty involvement. She stated that three hundred University of Georgia faculty members had made such a request in a meeting with Dr. Denley the previous day; that one hundred of the 114 UGA college of business faculty members had written the board of regents, also on October 11, to ask that it "delay any vote upon the proposed PTR changes to allow for broad faculty participation and involvement"; that the Executive Committee, the Faculty Affairs Committee, and the Faculty Conference of the UGA University Council had sent four resolutions to that effect to the system administration; and that, in September, Professor Biesecker herself, in her official capacity, had

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and BOR on Tenure" that garnered the signatures of more than 1,500 system faculty members asked the USG administration and board of regents, among other things, to restore tenure protections to the post-tenure review policy and "delay any vote . . . to allow for faculty response through duly elected faculty bodies across the state." Letters conveying faculty concerns about both the proposal and the process came from the Georgia Institute of Technology faculty senate, the Georgia State University faculty senate, the University of Georgia Terry College of Business faculty concerns committee, and the faculty senate executive committee of the University of West Georgia. The Georgia Tech letter, addressed to Acting Chancellor MacCartney, noted, among several serious concerns, that "no one has presented a reason, let alone a compelling reason," that faculty members subject to dismissal because of post-tenure review "should be denied the existing [academic due] process in 8.3.9.2." The Georgia AAUP conference president wrote not only to the acting chancellor but also to the provosts of every system institution to warn that adoption of the proposed amendments would spell the "end of tenure" in the USG. The AAUP chapters at the University of West Georgia and Georgia Tech both wrote the acting chancellor and members of the board of regents to urge that the board "reject these proposed changes in their entirety."

sent Dr. Denley “a memo of objections and requests for clarifications to which he has yet to provide a serious response.” She stated in closing that while she supports “a robust post-tenure review process across the USG,” the proposed policy is “more than that.” It “unmistakably undermines tenure at our great institution and puts our ability to recruit, hire, and retain the best faculty . . . at immeasurable risk.”

Among other such statements from USG faculty entities, the most significant from a governance standpoint are those of the Faculty Council of the University System of Georgia (USGFC), the representative faculty governance body for the entire system, most members of which are faculty senate presidents at their home institutions. In an October 12 resolution asking the regents to “table further action,” the USGFC stated that the “proposed changes have not been widely circulated to impacted faculty and impacted faculty have not been given adequate opportunity to comment”; that in a September 24 “informational meeting” with Dr. Denley, the USGFC had “expressed significant concerns” regarding “the procedures for the discipline and dismissal of faculty members”; and that, with those concerns left unaddressed, the faculty council needed an “expanded opportunity to consult with . . . constituent faculty across the system to provide informed feedback and advice upon the proposed changes.”

These objections and others lodged by various faculty governance bodies in the University System of Georgia had no apparent effect on the system administration or board of regents as they railroaded the proposal to adoption, even though, under AAUP-supported governance standards, such bodies should have exercised a primary role in the development and approval of revisions to the system’s policy on faculty evaluation. A sentence from an email message to the acting chancellor from a Georgia Tech faculty senate officer was prescient: “To move forward with adoption of the proposals, given how little dialogue has occurred, undermines Dr. Denley’s assurances that full consideration will be given to faculty feedback. Should the board act upon these proposals before providing a full opportunity for study and comment upon them, such an action would send a powerfully negative message to faculty within the system.”

## V. Conclusions

1. In revising the faculty evaluation policy of the University System of Georgia, the system administration and governing board rendered the

USG’s existing dismissal procedure inapplicable to severe sanctions imposed as a result of post-tenure review. Under the new policy, a system institution can dismiss a tenured professor for failing to remediate deficiencies identified through post-tenure evaluation without having afforded that professor an adjudicative hearing before an elected faculty body in which the administration demonstrates adequate cause for dismissal. By thus denying academic due process to tenured faculty members dismissed through post-tenure review, the USG administration and board of regents, in flagrant violation of the joint 1940 *Statement of Principles on Academic Freedom and Tenure*, have effectively abolished tenure in Georgia’s public colleges and universities.<sup>19</sup>

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19. In a three-page letter responding to the staff’s invitation for comment on the draft text of this report, Acting Chancellor MacCartney writes that she “wholly and strongly disagrees” with the finding that “the USG administration and board of regents . . . have effectively abolished tenure in Georgia’s public colleges and universities.” She states that “each of the USG’s 25 tenure-granting institutions will continue to award tenure and faculty will continue to hold tenure,” and she reiterates the assertions made in her previous communications with the AAUP, discussed earlier in this report. As she had in those letters, she equates peer review with academic due process. She also acknowledges that the system’s existing dismissal procedures, which afford academic due process, no longer apply to faculty members dismissed through post-tenure review. Instead, these procedures, she explains, now apply only to “a variety of malfeasances” that “occur at a single point in time.” Post-tenure reviews, “in contrast, . . . occur over multiple years” and “take place at multiple points, . . . not at one adjudicative hearing.”

Her final paragraph correctly notes that the “AAUP seems focused largely on the hearing panel and accompanying related procedures” but adds that the University System of Georgia is instead “squarely focused on the development of every one of our faculty and the success of every one of our students. It is critical that as a system we have mechanisms in place to work with faculty who are deemed as having unsatisfactory performance and to take action if and when faculty members are unable or unwilling to meet performance expectations—again, as evaluated by their peers. This is not unreasonable and does not ‘effectively abolish’ tenure. Rather, it holds all of us accountable for providing a high-quality education to students as we support them toward degree completion.”

In other words, the acting chancellor does not deny that the regents’ revisions to the post-tenure review policy removed what is widely understood as academic due process. However, tenure as defined in the AAUP-AAC&U 1940 *Statement of Principles on Academic Freedom and Tenure* does not exist separately from the process that protects it. Only by disregarding the accepted definition of tenure can the acting chancellor—presumably speaking for the regents as

2. Under AAUP-supported standards of academic governance set forth in the *Statement on Government of Colleges and Universities*, the USG faculty should have played a primary role in developing any changes to the system's post-tenure review policy. Instead, the USG administration and governing board initiated, pushed through, and imposed a new faculty evaluation policy without meaningfully involving the faculty and over the strong objections voiced by the system's critical faculty governance bodies. ■



Committee A on Academic Freedom and Tenure has by vote authorized publication of this report on the AAUP website and in the *Bulletin of the American Association of University Professors*.

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well as the USG administration—take the position that tenure in the University System of Georgia has survived the regents' revisions to the post-tenure review policy. Absent academic due process, what has survived is tenure in name only.