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Emergencies and Due Process: Developing an Involuntary Emergency Leave Policy at the University of Delaware

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Abstract

Following the University of Delaware's placing of two faculty members on involuntary leave with pay, it became clear to the University of Delaware AAUP leadership, the university senate leadership, and the university administration that the absence of a policy on emergency situations requiring faculty members to be banned from the classroom and from campus was a serious gap in defining both the powers of the administration and the due process rights of faculty members. Beginning in the spring of 2011, a committee was established that included key administrators, the University of Delaware general counsel, AAUP chapter officers, and the president of the university faculty senate to draft a policy for action by the senate. Following numerous drafts, meetings, and an open meeting of the senate, the senate approved a policy in spring 2012. The substance of the policy, its due process provisions, and the responsibilities it stipulates for administrators, the university faculty senate, and the AAUP chapter as bargaining agent are instructive both for shared governance and for the robust policy that was approved.

In 2010 the University of Delaware administration placed two faculty members on emergency involuntary leave with pay. In both instances, the university acted after concluding that the two faculty members posed a potential danger to themselves or to others. The faculty members were required to not perform the work that had been previously assigned to them and to refrain from coming to the campus.

While these actions were being taken, administrators and faculty officers in the university faculty senate and in the chapter of the American Association of University Professors discussed these unusual cases and the rationales for the decisions placing the two faculty members on involuntary paid leave. Among the concerns raised by faculty officials were the lack of due process for faculty members when decisions and actions about them were made in emergency situations, the lack of record keeping, and the criteria for determining whether an emergency existed. The university administration, leaders of the university faculty senate, and the University of Delaware chapter of the AAUP (UD/AAUP), which represents the faculty in collective bargaining, all recognized and agreed that the university acted in the absence of any specific policy. Over the next year and a half, a policy was established that aims to define emergency situations in which faculty members pose a threat and to provide due process and confidentiality.

The policy that was put in place, Emergency Involuntary Leave of Absence with Pay, provides definitions of emergency situations, due process rights for faculty members, and confidentiality. The following essay presents background on the University of Delaware and the governance structure through which the policy was formulated and approved. It summarizes the cases that precipitated the policy and how the policy was formulated, including the role of national AAUP documents and guidance from national AAUP staff. The essay proceeds by presenting the action and approval of the university faculty senate, the provisions of the policy, and how the policy seeks to fulfill potentially conflicting values of security and faculty rights in emergency situations involving threats posed by faculty members. It concludes by discussing the broader context within which the policy is located and may be appreciated.

The University of Delaware and Its Governance Structure

Founded in 1743, the University of Delaware is classified as a Research I institution.¹ It has 21,856 full-time students, which includes 2,816 graduate students. Of its undergraduates, 63 percent are from out of state. There are 1,128 full-time faculty members at the university, 837 of whom are either tenured or tenure track and 291 of whom are continuing non-tenure track. There are 39 part-time faculty members.

The university's shared governance structure includes a university faculty senate and the UD/AAUP, the sole collective bargaining agent for all full-time faculty members, including tenured, tenure track, and non-tenure track.² The university faculty senate is unitary in its composition, with both academic administrators and senators having voting rights. The senate works primarily through committees, including the Faculty Senate Welfare and Privileges Committee (FSWPC). This committee is charged with jurisdiction over faculty complaints that are not defined as grievances in the collective bargaining agreement. In addition, it reviews and develops policies in such areas as academic freedom, reappointment, and dismissal. Administrators are excluded from serving on this and other senate committees. The collective bargaining

agreement includes a provision that recognizes the authority of the *Faculty Handbook* regarding the policies which govern a variety of practices, including promotion and tenure, suspension, termination, sabbatical leave, and treatment for alcoholism. In general, the AAUP focuses on conditions of employment, such as workload and salary and benefits, and on enforcing procedures in the *Faculty Handbook* through the grievance procedure stipulated in the collective bargaining agreement. The university faculty senate formulates policies governing academic issues, including curricular matters, promotion and tenure, and suspensions, and makes substantive recommendations on such issues to the provost.

Precipitating Cases

During the 2010–11 academic year, two independent instances of involuntary leave with pay were initiated by the university administration. In each of these instances, faculty members were placed on involuntary leave with pay based on claims documented by the university regarding conduct deemed to be both erratic in fulfilling their obligations toward colleagues and students and potentially dangerous to either themselves or to others in their workplace. Although no specific policies covered these situations, the university involved the UD/AAUP in the first case and both the UD/AAUP and the senate in the second case.

In the first case, a member of the central administration called the faculty member into a meeting with her/his chair. A UD/AAUP officer was present at this meeting. The faculty member was informed of her/his reported erratic behavior that was viewed as threatening by other employees, and told s/he would be relieved of duties and should not be on campus. The faculty member was told s/he could return after seeing a professional, approved by the university, who would provide a report to the university stating that the faculty member was capable of fulfilling her/his responsibilities. The faculty member initially accepted and complied with the administration's order. Subsequently, s/he disputed it. The second case followed the same pattern as the first, except that the chairperson of the Faculty Senate Welfare and Privileges Committee attended the meeting with the chair, a UD/AAUP official, and a member of the central administration. In the second instance, moreover, the faculty member strongly resisted the university's claims. S/he disputed the facts presented by the administration and minimized the concerns expressed about her/his safety and mental state. S/he argued that the university's actions emerged from the chair's long-standing hostility and efforts at retaliation, and vigorously disputed each of the claims. S/he also argued that not being allowed on campus would seriously impair her/his ability to conduct ongoing scholarly activity.

Both of these cases were reported to the UD/AAUP Executive Council and raised concerns among the UD/AAUP leadership regarding the absence of any specific university policy and due process governing "involuntary leave with pay" resulting from claims that a faculty member might pose a threat to himself/herself or to others. The UD/AAUP leadership was concerned about the potential negative effects

of the administration's action on a faculty member's professional reputation and collegial relations on campus. At the same time, there was full recognition that emergency situations may arise that require a university to act in the interests of safety and security. The UD/AAUP leadership informed the university administration that a policy was needed in this area. University faculty senate leaders also expressed concerns over the absence of a policy and due process.

Encouraged both by the UD/AAUP leadership and the chairperson of the Faculty Senate Welfare and Privileges Committee, the faculty member in the second case filed for a hearing before the FSWPC. A major outcome of these hearings was a recommendation from the FSWPC to the provost that the vice president for finance and administration initiate a process for developing and implementing a policy governing involuntary leaves with pay under these circumstances. Far from resisting this recommendation, university administrators were fully supportive of it. Indeed, both before and during the hearing, university administrators, including the provost and the vice president for finance and administration, agreed with the UD/AAUP leadership and the senate leadership that a policy should be crafted that met the security interests of the campus and its employees and students, that recognized the responsibility of the administration for campus security, and that afforded due process to faculty members.

Formulating a Policy

In spring semester of 2011, the vice president for administration and finance formed an ad hoc committee to draft a policy on emergency leave without pay. After some deliberation, a consensus was reached that any policy should be subject to ratification by the senate so that it could be fully considered and gain institutional legitimacy. The members of the committee included representatives of the institutional stakeholders on the issues that would be involved in approving and implementing the policy: (1) the vice president for finance and administration; (2) the university general counsel; (3) the provost; (4) the president of the university faculty senate; and (5) the president and contract maintenance officer of the UD/AAUP.

The office of the vice president for administration and finance prepared an initial working draft of the policy in spring semester of 2011. Based on this draft, seven key issues emerged that centered on the administration of the policy, its scope, and the roles of UD/AAUP and the senate beyond the minimum requirements stipulated in the collective bargaining agreement and the *Faculty Handbook*. The following were the subject of discussion, e-mail exchanges, and revisions to policy drafts:

1. Which university official should be responsible for applying the policy in specific emergency situations?
2. Which university official should be responsible for hearing appeals under the policy?

3. What should constitute the parameters of the policy? Should it apply only to the most dangerous emergency situations, or should there be flexibility in its application? Under what conditions should it be applied?
4. In applying the policy, should there be any criteria regarding the faculty member's performance of his/her academic responsibilities?
5. How should the faculty member's rights to due process be formulated in the policy?
6. In addition to their respective powers of the grievance procedure and a hearing before the FSWPC, what roles should the UD/AAUP and the university faculty senate have in the policy? Should the UD/AAUP and the university faculty senate be involved at early stages of the implementation of the policy?
7. How should the policy go about balancing the faculty member's due process rights and his/her interest in confidentiality?

Members of the committee discussed these issues extensively in both face-to-face meetings and by e-mail. The initial draft went through five revisions before committee members reached a consensus version. The committee agreed that the draft policy should be reviewed by the relevant committees of the university faculty senate, including the Executive Committee, the Promotion and Tenure Committee, and the FSWPC. The committee also agreed that the policy should be subject to debate and a vote by the university faculty senate, and that the policy should be published in the *Faculty Handbook*.

National AAUP Documents and National AAUP Staff

The UD/AAUP leadership paid particular attention to the 2008 national AAUP report *The Use and Abuse of Faculty Suspensions*.³ Based on this report, the UD/AAUP leadership recognized that although the policy was being framed as an "involuntary leave with pay," it constituted a form of suspension. "Involuntary leave with pay" is one of a variety of terms that may be used to bar a faculty member from teaching, working, or being present on campus. Some of these terms are euphemisms for suspension rooted in actions that violate academic rules of conduct. Others, like "involuntary leave with pay," indicate faculty actions that may be beyond the faculty member's control. In any event, the result of all such terms is a sanction of a faculty member. As the national AAUP report states, "Administrators decline to use the term (suspension) and claim in fact that what they are imposing is not a suspension at all." For this reason, any "involuntary leave with pay," including one based on an emergency, should, following the national AAUP report, be "regarded in Association policy as a severe sanction second only to dismissal, because it has been seen primarily in terms of removal of a faculty member from teaching."

Moreover, faculty members engage in an expansive range of activities both on and off campus. In addition to teaching and departmental service, these activities include funded research and participation in an array of governance and professional functions. As these activities grow, “the more there is to suspend him or her from.” As such, profound interests in a faculty member’s professional reputation and academic freedom are at stake in any suspension. Because of the serious consequences of suspension, in reviewing the development of national AAUP policies, the report *Use and Abuse of Faculty Suspensions* quotes the following from the *Recommended Institutional Regulations on Academic Freedom and Tenure* (1968 and subsequent revisions):

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

Based on experiences with actual cases and national AAUP’s rich analysis, the UD/AAUP determined that the most significant challenges posed in formulating a policy included defining an emergency situation in ways that truly constituted immediate harm, that required the intervention by a faculty committee as soon as possible, and that included an appeals process that followed senate policy and procedure. Closely related to these policy concerns is the potential for harm to a faculty member’s reputation by an involuntary leave with pay, both in the local campus community and in wider academic and professional arenas.

As the policy was being formulated, several versions were sent to members of the national AAUP Committee on Academic Freedom and Tenure for comment. Throughout the process of developing the policy, the UD/AAUP contract maintenance officer and several members of the university faculty senate sought advice from national AAUP staff on the purpose and various provisions of the policy.

Senate Actions and Approval

The policy was the subject of an open meeting of the university faculty senate in February 2012 before it was scheduled for a vote by the senate. At both the open meeting and during the senate debate, the most extensively discussed issue was separating emergency from nonemergency situations and articulating separate policies for them. While early versions of the policy tended to conflate emergency and nonemergency situations, there was consensus at the open faculty meeting, and later in the senate debate, that the policy should focus only on emergencies. This consensus aimed at strictly limiting the power granted to the administration by the policy to suspend faculty members in an immediate and drastic fashion to emergency

situations only. Related to this issue was the clear instruction by faculty members to provide as specific a definition of emergency as possible. In sum, there was a strong consensus among faculty members engaged in deliberating the policy that it should cover specific threats and not provide additional grounds for administrative powers to discipline faculty members.

In addition to these major concerns, there were other issues raised. Several faculty members argued that a policy that enabled suspension, even under emergency situations, had the potential to significantly expand the power of the administration. Should the senate ratify the policy, it would provide legitimacy to administrative actions that had hitherto been undefined. This argument was countered by the claim that the absence of a policy actually constitutes a policy, and that without adopting the proposed policy, the administration could act at will. The policy would restrain administrative actions and make them more transparent and accountable to institutions of shared governance. Some faculty members expressed the view that in the earliest stages of implementing the policy, the faculty member should be provided with a written statement of the reason for the involuntary leave with pay and the evidence supporting it. It was argued that the faculty member later in the appeals process would need written statements. Without such written documentation, the faculty member would be at a severe disadvantage. Another concern focused on the appeals process. The issue of an imbalance in expertise and resources between individual faculty members and the university favored the university in the appeals process. For example, the university deploys its lawyers in appeals while faculty members typically rely on faculty volunteers to prepare their case. While formal procedures that constitute due process may appear fair, their implementation is far from equal and favors the university. This was recognized as a serious issue but not one specific to the policy under consideration. It was deferred for later discussion and action.

Following the open meeting, the policy draft was sent to the Faculty Senate Welfare and Privileges Committee for further comment and revision. The ad hoc committee worked on revising the draft based on issues raised at the meeting.

Based on changes made by the FSWPC and the ad hoc committee, a proposed policy was sent to the university faculty senate for consideration and action. The policy proposal was approved by both the FSWPC and by the Executive Committee of the university faculty senate. It was on the agenda for consideration and action at the senate's May 2012 meeting.

The president of the university faculty senate served on the ad hoc committee. He presented the policy to the senate,⁴ stressing that then existent university policies provided no protections for faculty members facing emergency suspension since there were no policies dealing specifically with such suspensions. The proposed policy, he stated, created no new powers for the administration with regard to suspension since those powers already existed. The proposed policy, which met AAUP national standards, would protect

faculty members from arbitrary action by the administration by, among other provisions, requiring a hearing before the FSWPC before a nonemergency suspension could occur and by requiring reporting and action by a newly established committee in emergency suspensions.

Further objections to the proposed policy were elaborations of issues raised in the open faculty meeting. These objections were based on concerns of insufficient requirements for written documentation, including the basis for the suspension and lists of witnesses, whether harm to self should be included as grounds for an emergency, and the degree to which police and experts would be involved in implementing the policy in specific situations. After debating these issues, the question was called. The university faculty senate approved the policy by a vote of forty-four (in favor) to fourteen (against). The senate also established a committee to formulate amendments to the policy that would improve its protections for faculty members.

The Final Policy

The final policy, Emergency Involuntary Leave of Absence with Pay, is included in the University of Delaware's *Faculty Handbook*.⁵ The policy is predicated on the need to protect members of the university community while preserving and protecting "the academic freedom necessary for the intellectual life of a university." The policy "is intended to balance the University's need to preserve the procedural rights of and professional reputation of individual faculty members with its legitimate interest in protecting the safety and security of all students, faculty and staff." With these as predicates, "the University recognizes the importance of establishing a procedural framework that respects the right of faculty members to receive attention and care for limited periods of time without forgoing their salaries or incurring reputational harm."

For emergency situations, the policy provides that the vice president for administration and finance may place a faculty member on an involuntary leave of absence with pay "if, on the basis of observed conduct, there is credible evidence to believe that the individual has engaged, is engaging, or is likely to engage in behavior that represents an imminent danger of harm to self or others." The vice president is required to give the individual faculty member the option of taking the leave voluntarily. Should the faculty member refuse, upon documenting the circumstances in writing, the vice president may place the faculty member on involuntary leave with pay for seven calendar days.

In order to provide authority to academics in the decision-making process, the policy establishes a consultative panel whose members include the president of the faculty senate, the vice president of the faculty senate, a designated representative from the UD/AAUP, and the deputy provost. Before placing a faculty member on a seven-day involuntary leave with pay, the vice president "shall make every reasonable effort to confer with and seek the advice of the Consultative Panel in advance." Once a faculty member is placed on

an emergency involuntary leave of absence with pay, the vice president is required to convene the dean of the college in which the faculty member's department is located and the consultative panel to explain why the action was taken and to seek their input and advice. At the end of the emergency involuntary leave of absence period, the vice president is required to meet with the faculty member to determine whether a continuation of the leave is needed. At this stage, the UD/AAUP contract maintenance officer "shall inform the faculty member of his/her due process rights and the procedure under this policy." At the faculty member's request, the UD/AAUP contract maintenance officer and another university employee may attend the meeting with the vice president. At this meeting, the faculty member may be (1) provided with the option of taking a voluntary leave of absence with pay "for such period and upon such terms as the faculty member and the Vice President shall agree upon" and (2) provide the vice president with "relevant materials or information pertinent to the situation." Should the faculty member be unable or unwilling to attend the meeting, "the Vice President, following consultation with the Consultative Panel, may dispense with such a meeting."

Following the above process, the vice president may place the faculty member on a second emergency involuntary leave of absence with pay. However, should "at least three members of the Consultative Panel determine that the decision to impose a second emergency involuntary leave with pay is not warranted, then the second involuntary leave with pay will be rescinded." The deputy provost does not have a vote on this decision. While the vice president has a very high degree of discretion in imposing an initial emergency involuntary leave with pay as befits circumstances in which there is credible evidence of serious and imminent danger, any subsequent imposition is subject, in effect, to a veto by a unanimous vote of the faculty members of the consultative panel.

Beyond the substantive and oversight roles of the consultative panel, a faculty member is afforded due process through both senate and UD/AAUP provisions. A faculty member who has been placed on emergency involuntary leave with pay has recourse to a review of the substance of the vice president's decision by the Faculty Senate Welfare and Privileges Committee. In addition, if faculty members are members of the UD/AAUP bargaining unit, they may file a grievance following the procedure stipulated in the collective bargaining agreement. Such a grievance must be based on allegations of procedural error in the policy.

Emergency, Due Process, and Confidentiality

The Emergency Involuntary Leave of Absence with Pay policy is intended to cover very specific situations. It is predicated on the need to protect members of the campus community in circumstances where a faculty member is deemed to pose credible threats that constitute serious and imminent danger. In such emergency circumstances, the university must act deliberately, forthrightly, and immediately.

Immediate actions in such circumstances are in tension with principles of due process for the faculty member as well as concerns for confidentiality that may affect the faculty member's privacy and professional reputation. The policy was formulated to address these tensions and to maximize campus safety, due process, and confidentiality in very difficult circumstances.

Those responsible for drafting the policy determined and the senate vote affirmed that the vice president for administration and finance should administer the policy and make decisions regarding its application to specific cases. This determination was based on the nonacademic nature of the circumstances delimited by the policy. It is not the faculty member's academic performance that is of concern but rather the danger posed to campus safety and security. In addition, both the Department of Public Safety and the Office of Human Resources report to the vice president for administration and finance. The nonacademic and academic lines of authority are best kept separate. For these reasons, the vice president is the most appropriate official to implement the policy.

Since the right to appeal is central for due process, there was a great deal of consideration given to dividing responsibility for implementing the policy and for serving in appellate capacities. These considerations also supported making the vice president responsible for initial implementation of the policy. At various stages of policy development, those responsible for drafting the policy considered vesting the provost with implementing it since this is ultimately a decision regarding a faculty member. Yet once it became clear, for reasons alluded to above, that the vice president is best positioned to implement the policy, it also became clear the provost, as chief academic officer, is in the best position to decide appeals after receiving a recommendation from the relevant senate committee. As stipulated in the policy, a faculty member may file a complaint with the Faculty Senate Welfare and Privileges Committee. Following senate rules, a report by the committee is submitted to the provost for a final decision on the complaint. By having the vice president implement the policy and by having the provost render appellate decisions after considering the senate committee report, the policy includes faculty participation in the appeals process and maintains a separation between determination of fact and appeal.

While the right to appeal is crucial for due process, the framers of the policy were very concerned with establishing due process procedures internal to the policy as well as a check on the implementing power of the vice president. These concerns were also bolstered by concern for the faculty member's confidentiality. Although there is an element of confidentiality in the appeals process, it requires a hearing, witnesses, and a record that includes participation of committee members. As such, a faculty member placed on an emergency paid involuntary leave under the policy may be reluctant to appeal because of the information that would be made available and disseminated through the appeals process. By contrast, the consultative panel is not only kept informed by the vice president and has veto power over a second involuntary leave, but it is also less

public than the appeals process in providing advice and making decisions. In addition, by including senate and UD/AAUP representation, the consultative panel provides for robust faculty participation prior to a second involuntary leave and any appeal that the faculty member may initiate. In effect, the consultative panel is designed to provide a measure of due process and a high degree of confidentiality in addition to its substantive and oversight roles.

Discussion and Conclusions

Rights of faculty members to due process are most clearly established and practiced in routine academic activities such as promotion and tenure, sabbatical leave, developing and approving courses, and other curricular matters. These well-established practices are rooted in long-standing and fully articulated values of academic freedom that go back to the founding of the American Association of University Professors and the *1915 Declaration of Principles on Academic Freedom and Academic Tenure*.⁶ Through duly constituted departmental committees, college and university committees, codified administrative policies, and provisions within collective bargaining agreements, routine activity and decision-making are subject to well-formulated procedures that provide due process for individual faculty members.

To be sure, due process is often lacking or severely restricted for faculty members. There are institutions whose claims to due process are either dubious or unfounded. Contingent faculty members often work without due process rights and their employment is subject to the discretion of administrators. During periods of national crisis, both the values underlying due process and their application have been deeply challenged by the broader political concerns and by threats internal to institutions. In addition, policies may have their own rationality deficits such as conflicts among policies and lack of coherence and specificity within policies. Moreover, there may be serious substantive and evaluative disagreements within the procedural constraints that provide due process. Also, faculty members typically depend on willing and knowledgeable advisors and activists to fulfill due process provisions. Such committed and knowledgeable faculty activists are needed to realize due process. The absence of faculty members committed to and knowledgeable about shared governance makes formal due process procedures hollow and may encourage cynicism and fatalism in academic life. Yet the essentials of procedural fairness may prevail, however imperfectly, and, indeed, be effective and acknowledged by all parties despite political circumstances, differences in academic judgment, and resources.

As in society-at-large, commitments to due process are most severely tested and, indeed, often contested in emergency situations. In the face of imminent threats or the perception of imminent threats, conflicts emerge between ensuring the safety of a campus population and the rights of individuals deemed to constitute threats to safety. Disputes involving airport security and the PATRIOT Act in the aftermath of the

September 11 attacks exemplify conflicts between establishing security, personal privacy, and rights to due process in the contexts of heightened threats and concerns with national security.⁷ In a similar vein, breaches of campus security and the loss of life in the Virginia Tech shootings have heightened both the perceptions of threats on campus and the need for the campus community to respond to them, including by taking preventative actions against people on campus, whether students or employees, including faculty members, when there is evidence that they pose a threat.

In the overall effort to increase campus safety and security, the threat posed by faculty members barely registers as a concern in reports of violent or threatening actions that create emergency situations. As a result, surveys of campus violence and policies focus on faculty members as resources for preventing violence rather than as perpetrators. Indeed, there is a distinct absence of reports and policy proposals that focus on faculty members as perpetrators. The Clery Center for Security on Campus, which advocates for legislation reporting campus crimes and formulates policies for prevention, does not have a specific discussion or recommendation on actions or threats to campus security by faculty members.⁸ The US Department of Education's *Handbook for Campus Safety and Security Reporting* (2011) does not have a category for incidents involving faculty members.⁹ The 2009 survey prepared by the National Association of College and University Business Officers, *Results of the National Campus and Security Project Survey*, does not discuss faculty as perpetrators.¹⁰ Journalistic reports, such as those in *Inside Higher Ed*, focus mainly on threats posed by students (April 15, 2013) or on campus security in the face of broader security threats, such as the Boston Marathon bombing (April 17, 2013).

Because violence or threats of violence posed by faculty are rare, fully articulated policies focusing on threats by faculty members that provide for both campus security and that afford due process and confidentiality to the individual faculty member are generally lacking in higher education institutions. While there are fully formulated policies at a number of institutions that focus on suspensions of faculty members based on academic performance, drug and alcohol abuse, and sexual and other types of harassment, policies dealing specifically with threats by faculty members to others and/or themselves have typically not been formulated. In this light, it is instructive to review several policies at various institutions that do focus on this issue so that the University of Delaware policy may be more fully appreciated.

In its Emergency Suspension Policy, the University of California system provides that "Chancellors or their designated representatives are empowered to impose Emergency Suspension on any student, faculty member, or employee" under California law.¹¹ The policy, which requires a report to the chancellor, gives veto power to the chancellor for any suspension that has been imposed. In addition, any individual suspended must be so informed and has the right to appeal. Should the emergency suspension be deemed unjustified, "the University is committed to making reasonable efforts to assist any individual who has been

disadvantaged in employment or academic status.” This policy appears to afford a rather limited role to faculty forums or committees in providing due process in emergency situations posed by faculty members. The chancellor is supreme in this policy.

Alternatively, the University of Pennsylvania’s Policy for the Temporary Suspension or Exclusion of a Faculty Member requires that the president or provost “seek the advice of the Senate Committee on Academic Freedom and Responsibility” before suspending a faculty member.¹² The president or provost must inform the committee of the action taken and must furnish the faculty member with “a written explanation of the basis for the suspension or exclusion within two working days.” Should the suspension be extended, written notice and explanation must be provided to the faculty member within two days of the extension. The faculty member “must be invited to respond in writing to any such notification” and “should furnish the committee with a copy of such response.” This policy provides for advice by a faculty committee before suspension and has some elements of due process.

Under its Policy on Sanctions for Job-Related Faculty Misconduct, Cornell University includes emergency suspension in a case “where the faculty member is charged with misconduct and the member’s continuance threatens imminent serious harm to the member or others or to property.”¹³ The suspension must be reported to the dean of faculty by the “appropriate administrator.” The charges against the faculty member are heard by the University Appeals Panel, which has members chosen by both the faculty member and the provost. The committee report goes to the president, whose decision that is “not subject to further appeal or reconsideration.” While this policy provides for a hearing before a panel composed of members partially chosen by the faculty member and a report submitted to the president before the president makes a decision, it decentralizes the implementation of emergency suspension to the “appropriate administrator.” This formulation is rather vague.

As part of the Illinois State University Campus Violence Prevention Plan, the Faculty Staff Threat Assessment Team was established to “identify, monitor, and when deemed necessary, recommend appropriate interventions for university faculty and staff who display unhealthy, threatening, and/or dangerous patterns of behavior.”¹⁴ This policy focuses on prevention and the provision of services, including mental health services. It does not focus on faculty in emergency situations.

In contrast to the policies presented above, the Emergency Involuntary Leave of Absence with Pay policy established at the University of Delaware is a fully articulated approach to emergency situations involving threats and potential threats by faculty members. It provides a definition of *emergency* and distinguishes between university powers and faculty rights in both emergency and nonemergency situations. It includes two layers of due process, empowers faculty in the decision-making process, and provides a high degree of confidentiality. Rooted in national AAUP guidelines and vetted by national AAUP staff, this policy

resulted from collaboration among local AAUP officers, university faculty senate officers, and university administrators. It was vetted by senate committees and approved by a senate vote. It may well serve as a resource for other institutions in developing policies unique to their circumstances and governance structures.

The policy and several related issues presented in this essay were the topic of a panel of University of Delaware participants at the AAUP Governance Conference on October 27, 2012. In addition to me, panelists included Jennifer “J. J.” Davis, vice president for finance and administration; Jeffrey Jordon, professor of philosophy and president of the university faculty senate (2011–12); and Lawrence White, vice president and general counsel.

Gerry Turkel, professor of sociology and legal studies at the University of Delaware, teaches courses in social theory, law and society, and politics and society. He has published articles in numerous journals, including Law and Society, Humanity and Society, Journal of Law and Society, Studies in Law, Politics, and Society, and Current Perspectives in Social Theory. He has authored Dividing Public and Private: Law, Politics and Social Theory and Law and Society: Critical Approaches.

Notes

¹ www.udel.edu/aboutus/

² See www.udel.edu/faculty-staff/#panel=0&tab=0 (faculty resources) for UD/AAUP, university faculty senate, and related documents.

³ www.aaup.org/report/use-and-abuse-faculty-suspensions

⁴ [Udcapture.udel.edu/podcast/detail.php?e=270](http://udcapture.udel.edu/podcast/detail.php?e=270)

⁵ facultyhandbook.udel.edu/handbook/411411-emergency-involuntary-leave-absence-pay

⁶ AAUP, *1915 Declaration of Principles on Academic Freedom and Tenure*, in *AAUP: Policy Documents and Reports*, 10th ed. (Washington, DC: AAUP, 2006), 291–301.

⁷ <http://www.aaup.org/report/academic-freedom-and-national-security-time-crisis>.

⁸ clerycenter.org.

⁹ US Department of Education, *The Handbook for Campus Safety and Security Reporting* (Washington, DC: US Department of Education, 2011), ope.ed.gov/security.

¹⁰ National Association of College and University Business Officers, *Results of the National Campus and Security Project Survey* (Washington, DC: NACUBO, 2009).

¹¹ policy.ucop.edu/doc/2710525/PACAOS-50

¹² <http://www.upenn.edu/almanac/volumes/v54/n10/policy.html>.

¹³ Cornell University, *Policy on Sanctions for Job-Related Faculty Misconduct* (Ithaca, NY: Cornell University Faculty Senate, 2005).

¹⁴ security.illinoisstate.edu/downloads/CVPPFinal2010pdf.