



May 19, 2016

VIA ELECTRONIC MAIL AND USPS

Mr. Paul C. Goodpaster
Chair
Morehead State University Board of Regents
202 Howell-McDowell
Morehead, Kentucky 40351

Dear Mr. Goodpaster:

Members of the Morehead State University chapter of the American Association of University Professors have contacted the national office of this Association to express concern over actions taken by the Morehead State University board of regents. Of particular concern is the board's proposed revision of institutional regulation PAc-26: "Termination of Faculty for Cause, Financial Exigency, and Discontinuance of Program." Members of our chapter view the process by which PAc-26 is being modified as inconsistent with AAUP-supported standards of academic governance and the proposed revisions to PAc-26 as inconsistent with AAUP-supported procedural safeguards of academic freedom and tenure. On the basis of the information provided to us, we believe these concerns to be well founded.

In the 2014–15 academic year, the Morehead State University administration sought to revise policies governing faculty discipline (PAc-22) and termination of faculty appointments (PAc-26). At the request of the faculty senate, our office in April reviewed changes proposed by the administration and identified major departures from AAUP-supported standards in both PAc-22 and PAc-26. We understand that, subsequently, representatives of the faculty senate and the academic affairs administration worked collaboratively to modify these policies and agreed on changes that were approved by the faculty senate in November of last year and by the president in December. We understand, further, that these modifications were then forwarded to the board of regents for approval. At a May 13, 2016, work session of the board, you are reported to have announced in your capacity as chair that the board would not act to approve the revisions to PAc-26 approved by faculty senate and the president, but instead that the board would be solely responsible for fashioning a new policy that would provide the administration with more "flexibility" in addressing expected budget shortfalls. We have been advised that the board is planning to approve a new institutional regulation PAc-26: "Policy for Furlough of Faculty or Elimination of Standing Faculty Appointments Due to Reorganization, Consolidation, or Elimination of Academic Programs, Financial Exigency, or Significant Operating Budget Deficit" at its June 10, 2016, meeting. We have been informed that the board has not sought the approval of this policy from the faculty senate.

Mr. Paul C. Goodpaster

May 19, 2016

Page 2

The interest of our Association in this case stems from its longstanding commitment to appropriately shared responsibility and joint action among governing board, administration, and faculty in institutional decision making. Formulated jointly with the American Council on Education and the Association of Governing Boards of Universities and Colleges, the attached *Statement on Government of Colleges and Universities* represents the Association's foundational policy document on academic governance. The *Statement* calls for joint effort among the different components of institutional government and specifies areas of primary responsibility to these components. While we appreciate that Morehead State University, as many other institutions of higher education in the United States, is expecting to face significant budgetary shortfalls, such institutional problems are not productively addressed by unilateral action on the part of governing board. As the *Statement on Government* notes: "a college or university in which all the components are aware of their interdependence, of the usefulness of communication among themselves, and of the force of joint action will enjoy increased capacity to solve educational problems."

While the *Statement on Government* acknowledges the governing board's "final authority," it allots to the faculty "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." As the *Statement* further explains, "[f]aculty status and related matters are primarily a faculty responsibility; this area includes appointments, reappointments, decisions not to reappoint, promotions, the granting of tenure, and dismissal." Because terminations of faculty appointments that result from financial exigency or program discontinuation directly relate to several areas of faculty primacy, our Association has repeatedly and consistently stressed the importance of direct faculty involvement in the formulation and implementation of policies that govern such terminations.

Derivative policy statements on institutional governance issued by this Association, in particular the attached statements on *The Role of the Faculty in Budgetary and Salary Matters* and on *The Role of the Faculty in Conditions of Financial Exigency*, provide guidance on the appropriate level of faculty involvement in these respective areas. The latter statement notes specifically that "faculty and administrations . . . should . . . work together to include the report's policy statements and recommendations in their institutional regulations and faculty handbooks." Furthermore, Regulation 4 of the attached *Recommended Institutional Regulations on Academic Freedom and Tenure* sets forth standards governing the termination of appointments for reasons of financial exigency and program discontinuance for educational reasons.

We have reviewed the May 4, 2016, draft of proposed revisions to PAc-26. These proposed revisions are sharply at odds with Regulation 4 of the *Recommended Institutional Regulations*, and their adoption would seriously threaten tenure and academic freedom at Morehead State University. The following two specific concerns are merely illustrative of the serious departures from AAUP-supported procedural safeguards of academic freedom and tenure that the proposed changes represent.

Mr. Paul C. Goodpaster

May 19, 2016

Page 3

First, the revisions contemplate “reorganization,” “consolidation,” or “elimination” of academic programs leading to termination of appointments absent a declaration of financial exigency. The AAUP does not oppose reorganizing or consolidating academic programs so long as the faculty exercises its primary responsibility in reaching decisions to do so, as is consistent with the *Statement on Government*. But the AAUP does oppose reorganizing or consolidating programs, absent a condition of financial exigency, when doing so requires the termination of faculty appointments, because the risk of appointments being selected for termination based on considerations that violate academic freedom are too great under these conditions. This is why Regulation 4d (Discontinuance of Program or Department for Educational Reasons) does not allow for reorganization or consolidations when terminations are involved.

Further, while Regulation 4d permits the termination of appointments due to program discontinuation, it requires such a discontinuation to be based primarily on educational considerations that are to be determined by the faculty. By contrast, the bases upon which the administration can justify the terminations of appointments in the proposed revisions include such patently non-educational considerations as “[a] reallocation of resources due to budget priorities.” On this basis, the administration’s decision to allocate budgetary resources from one program to another would be sufficient reason to terminate the appointments of faculty members. Under such conditions, there is no security of tenure.

Second, Regulation 4c begins by defining financial exigency as “a severe financial crisis that fundamentally compromises the academic integrity of the institution as a whole and that cannot be alleviated by less drastic means.” In contrast, the proposed regulation states that financial exigency is “a serious financial condition within the University due to reductions in state funding, loss of revenue from endowments or investments, decline in institutional enrollment, acts of terrorism or significant public crisis.”

Notwithstanding the inclusion of “acts of terrorism or significant public crisis, other action, events or combinations thereof,” which strikes us as the contribution of an overzealous attorney, the proposed regulation permits a financial exigency to exist anywhere “within the University,” such as in a department, college, or school, rather than pose a threat to the institution as a whole.

While our concerns in this case have thus far focused on policy matters, we understand that the board may be contemplating the termination of multiple faculty appointments. We further understand that the administration conducted a faculty survey regarding possible methods of alleviating budget shortfalls. We also understand that the results of survey, which have been reported to the board, indicate a preference among the faculty surveyed for terminating faculty appointments rather than reducing salaries to address budget shortfalls. We wish to stress that, in matters of institutional decision-making, administering a faculty survey is not an adequate substitute for consultation with the elected representatives of the faculty. We would view the termination of multiple faculty appointments at the university under the provisions of the

Mr. Paul C. Goodpaster

May 19, 2016

Page 4

proposed revision of PAC-26 to be a matter of basic concern to this Association under its longstanding obligations.

We are also troubled that the board does not appear to have taken into consideration the history of the adoption of PAC-26 in 1987. As you may know, Morehead State University was added to this Association's list of censured administrations in 1983 as a result of the nonreappointment of two faculty members who were denied the academic due process to which they were entitled under AAUP-supported standards. Four years later, our standing Committee A on Academic Freedom and Tenure reported that the institution's interim president had made the removal of censure "a top priority for his administration." Having conferred with our staff in Washington, the interim president worked jointly with the faculty senate to adopt institutional regulations on academic freedom and tenure, including procedures governing termination (dismissal for cause as well as terminations resulting from financial exigency or discontinuance of program), that fully comport with those of the AAUP. These regulations were subsequently approved by the regents. With the adoption of AAUP-supported due process procedures, the institution was removed from our censure list.

The unilateral conduct of the board of regents in the present instance stands in stark contrast to the board's earlier adoption of the original policy on consultation with the faculty and the administration. We urge the members of board of regents to honor the precedent set by its predecessors and to work with the faculty and administration in revising PAC-26, and any other institutional policies should the necessity arise. We also remind the board that when its predecessor adopted PAC-26 to effect the removal of AAUP censure, it signaled to the higher education community that the institution was fully committed to academic freedom and tenure. The actions of the board now call that commitment into question.

Sincerely,



Hans-Joerg Tiede
Associate Secretary

Enclosures (by electronic mail only)

cc: Mr. Patrick Price, regent and member of the PAC-26 workgroup
Ms. Debbie Long, regent and member of the PAC-26 workgroup
Professor Royal Berglee, faculty regent and member of the PAC-26 workgroup
Ms. Sharon S. Reynolds, secretary to the board of regents
President Wayne D. Andrews
Professor Annie Adams, chair, faculty senate
Professor Nancy McKinney, president, Kentucky conference of the AAUP