VIA ELECTRONIC MAIL

Professor Peter Teachout
Chair, Tenure and Retention Committee
Vermont Law School
164 Chelsea Street
Post Office Box 96
South Royalton, Vermont 05068

Dear Professor Teachout:

In your capacity as chair of the Tenure and Retention Committee at Vermont Law School, and at its direction, you have asked us to advise the committee regarding AAUP-recommended principles and procedural standards related to termination of faculty appointments. You have done so as a result of actions announced by the Vermont Law School administration earlier this month to terminate the appointments of a significant number of tenured as well as other long-serving nontenured faculty members on grounds of serious financial difficulties. We understand further that the committee wishes to know whether the steps taken by the administration in developing and implementing its restructuring plan conform to Association-supported standards of academic due process.

Fundamental tenets of academic freedom and their relation to a system of academic tenure are set forth in the attached 1940 Statement of Principles on Academic Freedom and Tenure, jointly formulated by the AAUP and the Association of American Colleges and Universities and endorsed by more than 250 scholarly societies and higher-education organizations, including the Association of American Law Schools, whose endorsement of the document dates back to 1946.

The 1940 Statement declares that “[i]nstitutions of higher education are conducted for the common good and not to further the interest of either the individual teacher or the institution as a whole. The common good depends upon the free search for truth and its free exposition.”

The statement goes on to assert that “[a]cademic freedom is essential to these purposes and applies to both teaching and research. Freedom in research is fundamental to the advancement of truth.” Freedom in teaching “is fundamental for the protection of the rights of the teacher in teaching and of the student to freedom in learning.”

These freedoms are secured by an indefinite appointment—“permanent or continuous tenure”—which is granted to faculty members “after the expiration of a probationary period.” The statement specifies that a tenured appointment “should be terminated only for adequate cause . . . or under extraordinary circumstances because of financial exigencies.”
Derivative procedural standards governing the termination of appointments for reasons other than adequate cause are set forth in Regulation 4c of the Association’s *Recommended Institutional Regulations on Academic Freedom and Tenure* (also attached). Under Regulation 4c, an institution may terminate an appointment with continuous tenure or an appointment for a specific term prior to its expiration “under extraordinary circumstances because of a demonstrably bona fide financial exigency,” defined 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.”

“An elected faculty governance body” will participate from the beginning in discussions that lead to a determination that such a condition exists or “is imminent.” Such a body will also participate in determining whether “all feasible alternatives to termination of appointments have been pursued, including expenditure of one-time money or reserves as bridge funding, furloughs, pay cuts, deferred compensation plans, early-retirement packages, deferral of nonessential capital expenditures, and cuts to noneducational programs and services, including expenses for administration.”

In addition, “[b]efore any proposals for program discontinuance on grounds of financial exigency are made,” an appropriate faculty body “will have opportunity to render an assessment of the institution’s financial condition.” In order to do so, it will have access to “five years of audited financial statements, current and following-year budgets, and detailed cash-flow estimates for future years” and “detailed program, department, and administrative budgets.” Faculty members in programs whose discontinuance is proposed “will promptly be informed of this activity and provided at least thirty days in which to respond.”

Consistent with widely observed standards of academic governance, which entrust primarily the faculty with considerations of educational policy, a faculty body will not only participate but also have “primary responsibility” for “determining where within the overall academic program termination of appointments may occur” and for “determining the criteria for identifying the individuals whose appointments are to be terminated,” criteria which will include “length of service.”

Similarly, “[t]he responsibility for identifying individuals whose appointments are to be terminated should be committed to a person or group designated or approved by the faculty.”

Under Regulation 4c(3), those faculty members notified of the proposed termination of their appointments will be afforded the right to an on-the-record adjudicative hearing before a faculty committee. In such a hearing, the faculty member may contest the following: (a) “[t]he existence and extent of the condition of financial exigency,” although the “findings of a faculty committee in a previous proceeding involving the same issue may be introduced,” (b) “[t]he validity of the educational judgments and the criteria for identification for termination,” although “the recommendations of a faculty body on these matters will be considered
presumptively valid,” and (e) [w]hether the criteria are being properly applied in the individual case.”

Under Regulation 4c(4), if an institution terminates appointments because of financial exigency, no new appointments will be made “except in extraordinary circumstances where a serious distortion in the academic program would otherwise result.” Nor, with the same exception, will the appointment of a tenured faculty member “be terminated in favor of retaining a faculty member without tenure.”

Regulation 4c(5) provides that the institution “will make every effort” to relocate affected faculty members “in another suitable position within the institution.”

Regulation 4c(6) specifies that faculty members whose appointments will be terminated because of financial exigency will be afforded at least one year of notice or severance salary.

And Regulation 4c(7) requires that no position vacated through termination for reasons of financial exigency will be filled “within a period of three years, unless the released faculty member has been offered reinstatement and at least thirty days in which to accept or decline it.”

The AAUP recognizes that financial emergencies can occur and that institutions may have to make hard choices to avoid compromising their academic integrity—or going out of existence. The Association, however, is concerned that such an emergency might serve as a pretext for terminating faculty appointments based on considerations that violate principles of academic freedom and tenure or run afoul of anti-discrimination laws. The above-cited due-process standards are intended to prevent such an occurrence.

By contrast, the procedures that the Vermont Law School administration has initiated, according to the information currently available to us, appear to depart grossly from these standards. Indeed, its plan will eviscerate tenure at the Vermont Law School and, with it, the protections for academic freedom.

The grossest departures evident are the absence of adequate faculty participation as called for in AAUP-recommended standards—by the faculty as a whole or by a representative body of the faculty—in the discussions that preceded the administration’s announced actions, in setting the criteria for terminating faculty appointments, and in singling out the particular ones for termination, as well as the apparent absence of “a demonstrably bona fide financial exigency,” defined in Regulation 4c(1) 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” than the termination of appointments.

Even if the faculty, administration, and governing board had together determined that a state of financial exigency (as defined above) did exist, the process enacted for determining whose appointments have been terminated is still be unacceptable under principles of academic
freedom and tenure. Indefinite tenure carries with it the presumption of competence. It is awarded after a period of probation in which the candidate demonstrates to the satisfaction of peers that he or she has met—and potentially will continue to meet—the institution’s standards for tenure in the areas of teaching, scholarship, and service.

Once awarded, tenure can be terminated only on the bases noted above if it is to retain any meaning. The proposal to determine which appointments are to be terminated based on the administration’s evaluation of each faculty member’s relative merit effectively erases the protections of tenure and returns all faculty members to probationary status.

I hope you find these comments and the enclosed documents helpful. Please do not hesitate to contact us again if you and your colleagues have any further questions. And please keep us informed of developments so that we can continue to monitor the situation.

Sincerely,

[Signature]

Anita Levy, Ph.D.
Associate Secretary

Enclosures (by electronic mail)