



December 24, 2013

VIA ELECTRONIC MAIL AND USPS

Ms. Penelope (Penny) Andrews
President and Dean of the Faculty
Albany Law School
80 New Scotland Avenue
Albany, New York 12208-3494

Dear Dean Andrews:

Concerned faculty members at Albany Law School have sought the advice and assistance of the American Association of University Professors as a result of a December 16 electronic mail message to the faculty from Mr. Daniel Nolan, chair of the board of trustees. In his message, Mr. Nolan stated that “relevant financial circumstances facing the School require a headcount reduction, including faculty.” Enclosed with his message were criteria—under the headings “teaching,” “scholarship,” and “service”—that Mr. Nolan said the administration had proposed for use “in considering faculty reductions.” In closing, he asked for faculty comments on the proposed criteria by January 10, since the board would be reviewing them at its January 14 meeting. Faculty sources have informed us that the faculty did not participate in the deliberations that led to the decision to terminate appointments, that the board has not declared a state of financial exigency, and that financial analyses conducted independently by the Faculty Budget Committee and by Dr. Howard Bunsis, a professor of accounting at Eastern Michigan University and chair of the AAUP Collective Bargaining Congress, question whether a financial emergency exists. Faculty sources have further reported your having stated both privately and publicly that terminations of faculty appointments would be effected without regard to whether the appointments were nontenure track, probationary for tenure, or tenured.

The interest of our Association in the current situation at Albany Law School stems from its longstanding commitment to academic freedom, tenure, and due process, as articulated in the enclosed 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 210 scholarly and higher-education organizations, including (in 1946) the Association of American Law Schools.¹ Derivative procedural standards are set forth in the AAUP’s enclosed *Recommended Institutional Regulations on Academic Freedom and Tenure*.

As these documents specify, the AAUP recognizes only three bases for the termination of appointments as being consistent with principles of academic freedom and tenure: (1) dismissal for cause, (2) bona fide financial exigency, and (3) program discontinuance for educational

¹ The statement on academic freedom on page 1 of the law school’s 2012-13 faculty handbook is derived from the 1940 *Statement*.

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reasons, as determined by the faculty. Relevant procedural standards are set forth in Regulations 4 and 5 of the *Recommended Institutional Regulations on Academic Freedom and Tenure*. (In discussing involuntary separation from service, the AAUP distinguishes between *termination*, which is a decision to end a tenured appointment or a full-time term appointment before its expiration, and *nonrenewal*, which is a decision not to renew an appointment for a definite term. Standards for nonrenewal of appointment are set forth in the enclosed *Statement on Procedural Standards in the Renewal or Nonrenewal of Faculty Appointments*).

Because the stated grounds for the threatened terminations are financial, the most applicable AAUP-recommended procedural standards are those related to financial exigency, as incorporated in Regulation 4c of the *Recommended Institutional Regulations*. In a November 19 advisory letter to AAUP chapter president Donna Young (enclosed), AAUP president Rudy Fichtenbaum summarized the key provisions of Regulation 4c. They require meaningful faculty participation in determining that a condition of financial exigency exists and in deciding where terminations will occur based on programmatic considerations. In making such a decision, appointments of tenured faculty members are not to be terminated before those of nontenured faculty members, and every effort is to be made to place affected faculty members in another suitable position within the institution. Faculty members whose positions are selected for termination would be afforded the right to an adjudicative hearing of record before a duly constituted faculty body.

What the Albany Law School administration has proposed, according to the information currently available to us, departs grossly from these standards. Indeed, its proposal, if effected, would eviscerate tenure at the Albany Law School and, with it, the protections for academic freedom.

The grossest departure is the evident absence of anything remotely resembling “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 proposed for determining whose appointments will be terminated would 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.

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As stated above, the information contained in this letter has come to us primarily from faculty sources. We appreciate that you may have additional information that may enhance our understanding of what is occurring. If our account is essentially accurate, this case is of major importance to us under our longstanding responsibilities, and we would urge the administration and governing board of Albany Law School not to go forward with the proposed action and instead to consider other solutions, such as those proposed by the faculty, to address the school's current financial situation. We would be pleased to work with you and the faculty in finding an acceptable resolution.

We await your response.

Sincerely,

A handwritten signature in black ink that reads "Gregory F. Scholtz". The signature is written in a cursive style with a long horizontal line extending to the right.

Gregory F. Scholtz

Associate Secretary and Director

Department of Academic Freedom, Tenure, and Governance

Enclosures (by electronic mail only)

Cc: Mr. Daniel Nolan, Chair, Albany Law School Board of Trustees

Professor Rudy Fichtenbaum, President, AAUP

Professor Donna Young, President, Albany Law School AAUP

Professor Thomas Policano, Executive Director, New York Conference AAUP