
Academic Freedom and Tenure: Spalding University (Kentucky)¹

(MAY 2017)

Dear Professor Grise-Owens:

As of today, your employment with Spalding University has officially ended. At this time, you have two choices: either resign and accept the enclosed offer of Settlement and Release or be terminated. The proposed Settlement and Release keeps you whole for the next eighteen months. You have twenty-one days to review this offer. Should you have any questions, please contact Jennifer Brockhoff, Director of Human Resources, [phone number redacted].

Mrs. Brockhoff will have your office packed up and ship your belongings to your home before the Thanksgiving holiday. Should you need anything immediately from your office, please contact Mrs. Brockhoff directly.

As ever,

Tori Murden McClure
President

Dr. Joanne Berryman, RN, EdD, MSN, FACHE
Provost

With this letter of November 11, 2016, Dr. Erlene Grise-Owens, a tenured professor of social work, was summarily dismissed from the Spalding faculty after eighteen years of service.²

I. The Institution

Spalding University is a coeducational institution of higher education located in Louisville, Kentucky. Named after Catherine Spalding, who in 1812

cofounded the Sisters of Charity of Nazareth, the institution traces its origins to Nazareth Academy, established by the sisters in Nazareth, Kentucky, in 1814. In 1920, the Sisters of Charity opened Nazareth College in Louisville as the state's first four-year Roman Catholic college for women. The institution was renamed Spalding College in 1969, became coeducational in 1973, and received its current name in 1984. It is a member of the Association of Catholic Colleges and Universities.

Spalding offers both undergraduate and graduate degrees. According to the most recent statistics published by the US Department of Education, its approximately 2,200 students are served by 107 full-time and 70 part-time faculty members. The institution has been accredited by the Southern Association of Colleges and Schools Commission on Colleges since 1938. Its undergraduate and graduate social work programs are accredited by the Council on Social Work Education. The main faculty governance body is a faculty senate consisting

1. The text of this report was written in the first instance by the members of the investigating committee. In accordance with Association practice, the text was then edited by the staff and, as revised with the concurrence of the committee, was submitted to Committee A on Academic Freedom and Tenure. With the approval of Committee A, the report was subsequently sent to the faculty member at whose request the investigation was conducted, to the administration of Spalding University, and to the faculty members interviewed by the committee. This final report has been prepared for publication in light of the responses received and with the editorial assistance of the staff.

2. Through her attorney, Professor Grise-Owens declined the administration's settlement offer.

of members elected both at large and as school representatives. The president and provost serve as ex officio, nonvoting members. There is no AAUP chapter at the institution.

The president of Spalding University is Victoria (Tori) Murden McClure, the first woman to have rowed solo across the Atlantic Ocean, a feat she accomplished in 1999. President McClure holds master's degrees in divinity and fine arts as well as a juris doctorate. Prior to her appointment as Spalding's president in 2010, she was the institution's vice president of external relations, enrollment management, and student affairs and, prior to that, a member of the board of trustees. The chief academic officer is Provost Joanne Berryman, an associate professor of nursing who served as dean of Spalding's college of health and natural sciences before being appointed provost in October 2016.

Professor Grise-Owens holds a master's degree in social work and a doctorate in education. She joined the Spalding faculty in 1998 as an assistant professor of social work, was granted tenure in 2002, and was promoted to full professor in 2010. From 2008 to 2016, she served as director of the master of social work program.

II. The Case of Professor Grise-Owens

Beginning in the fall 2014 semester, Professor Grise-Owens, at times by herself and at other times in conjunction with two of her colleagues in the School of Social Work—Assistant Professor Laura Escobar-Ratliff and Ms. Mindy Eaves, a part-time faculty member—had lodged a variety of complaints with various campus entities. Several of these were enumerated in an October 25, 2016, memorandum to the faculty senate from the three faculty members. The memorandum alleged that students of color who had been dismissed from the social work program were not afforded the same appeals processes as white students who had been dismissed for similar reasons. The memorandum also complained about bullying behavior by Dr. Patricia Spurr, associate dean of the schools of nursing and social work, against Professor Escobar-Ratliff. In an August 26, 2016, memorandum addressed to Ms. Jennifer Brockhoff, director of human resources, Professor Grise-Owens had complained of bullying conduct against her by Dr. Kevin Borders, chair of the School of Social Work; Dr. John James, dean of the College of Social Sciences and Humanities; and Mr. Charlie Baker, a lecturer in the School of Social Work. She also complained of the circumstances surrounding

her removal in fall 2016 from the position of director of the master of social work program. Ms. Brockhoff investigated several of these complaints. In none of the cases did she reach findings in favor of the complainants.

The incident that precipitated Professor Grise-Owens's dismissal took place in February 2016 and involved a white student (Student X), who had a history—about which Dr. Borders was aware—of making inflammatory and racially charged comments in class, which included the use of racial epithets.³

In February 2016, Student X brought a gun in a car to a campus parking lot and showed it there to a fellow student.⁴ Student X said to the other student, "I am tired of these people fucking with me." Believing that Student X was referring to students and faculty members in the social work program, the other student reported the incident to institutional authorities. However, the Spalding administration did not take any action regarding Student X at that time, nor did the administration contact the Louisville Metro Police Department about the incident.

Immediately following the initial report of Student X's conduct, Dr. Borders informed all the faculty members of the School of Social Work about the incident, except for Professor Grise-Owens (who was on sabbatical) and the school's three faculty members of color—Professor Escobar-Ratliff, Ms. Eaves, and another part-time faculty member. He neglected to inform the faculty members of color despite the fact that Student X was enrolled in courses with Professor Escobar-Ratliff and Ms. Eaves. When Professor Escobar-Ratliff asked him subsequently why he had not informed the entire social work faculty, Dr. Borders replied that the administration had told him that there was no need to do so. The day after displaying the gun, Student X attended Ms. Eaves's class, which was held near another class taught by Professor Escobar-Ratliff. During this class, Student X behaved provocatively and used racial epithets. After class, Ms. Eaves found herself alone with Student X, who continued to act inappropriately.

When Dr. Borders eventually told Professor Escobar-Ratliff and Ms. Eaves about the incident, they concluded that the university had responded

3. The account in this section is largely based on documents, including correspondence with President McClure, Dr. Borders, and Ms. Brockhoff, provided by Professors Grise-Owens and Escobar-Ratliff.

4. This portion of the account is also based on information that Dr. Borders reported to Professor Escobar-Ratliff.

inadequately. They were concerned that the failure to inform them (especially when their white social work colleagues had been informed) could have placed them and their students in danger—in particular, because Student X had a history of expressing racial animosity toward people of color and of engaging in inflammatory conduct in their classes.⁵

Immediately after being told about the incident, Professor Escobar-Ratliff filed a complaint with Dr. Borders and Dr. Rick Hudson, dean of students, about the failure to inform all faculty. On March 7, Professor Grise-Owens filed a complaint with Provost Berryman and Ms. Brockhoff specifically over the administration's failure to inform the faculty members of color. While acknowledging that she was not directly involved in the matter, Professor Grise-Owens cited the "power differential" between tenured faculty members, on the one hand, and students and untenured faculty members, on the other, which, she wrote, made the latter less likely to voice concerns, and she pointed out that her "senior and tenured status" provided her with "a certain amount of protection" that enabled her to speak in their behalf.

The administration did not provide a formal response to these two complaints until late September. In the meantime, Dr. Borders had over the summer significantly delayed Ms. Eaves's appointment to her part-time teaching duties, leading Professor Grise-Owens on July 22 to voice concern to Provost Berryman and Dr. Borders that the delay had "the appearance of retaliation." Ms. Eaves subsequently received notice of appointment.

Then, on August 26, Professor Grise-Owens sent the following e-mail message to Ms. Brockhoff, Provost Berryman, Professor Escobar-Ratliff, and Ms. Eaves:

Colleagues: I want to share an interchange with [name redacted], as we had dinner Sunday night. She works in customer service at [company name redacted]. Recently, a white customer came on their property, made a racially charged statement, and showed a gun. Management had 6 police officers there within approximately 15 minutes. The man proclaimed that he had a legal right to have

the gun; the police checked the veracity of that statement. They escorted him from the building and he was ordered to stay off the property.

I remain puzzled and troubled about how a very similar incident—and even more involved situation—was handled (and continues to be handled) at SU.

President McClure was not among those addressed in the message. Nevertheless, she responded to it on August 29. In her response, she sharply disputed the relevance of this incident to what had occurred at Spalding in February: "We have never had a student, an intruder, or bystander brandishing a weapon inside one of our buildings, with or without making racially charged statements. If such an event had occurred, we would have contacted the Louisville Metro Police Department and had such a person removed. I believe you are actively demonizing a former Spalding student for your own political agenda. This is unacceptable behavior for a tenured faculty member at this university. I will take this matter up with the Faculty Senate."

On August 30, Professor Escobar-Ratliff wrote to protest President McClure's characterization of Professor Grise-Owens's note. After acknowledging that Student X had not entered a university building with a gun, she recounted in detail what had been reported. Twenty minutes later President McClure responded by e-mail that the incident described by Professor Grise-Owens "was dramatically different from anything that had occurred on this campus. The event was reported [by Professor Grise-Owens] in a way that was intended to provoke a response. I will ask the Faculty Senate to respond." On September 2, Ms. Eaves wrote to the president to reiterate her concerns regarding her own safety and that of her students. Again, within twenty minutes, President McClure responded:

I think it is outrageous that we should involve the LMPD [Louisville Metro Police Department] in the follow[ing] situations:

1. A student makes racially insensitive remarks in class. I think perhaps we should maybe educate the student instead.
2. A student keeps a gun in [the student's] car. The Kentucky legislature has decided that this is within the second amendment rights of our students. Calling the police would have violated the civil rights of this student. . . .

It is equally outrageous to connect these separate events as if they happened all in one day and that Spalding University stood by and did nothing.

5. Individuals with whom the committee spoke confirmed that the white members of the social work faculty were informed but that the faculty members of color were not. They also asserted that adjunct faculty members, at least in the School of Social Work, are largely "invisible."

As she had promised in her e-mail message to Professor Grise-Owens, President McClure did take the issue to the faculty senate. On September 23, she sent a memorandum to the senate (the president did not provide this memorandum to Professor Grise-Owens but forwarded it to the chair of the investigating committee in response to the chair's invitation to provide comments on the case). The memorandum stated that the president wished to "make the Faculty Senate aware" that she had "taken issue with mischaracterizations made by Professor Erlene Grise-Owens, a tenured member of the faculty of Spalding University," and reproduced the August 26 e-mail message from Professor Grise-Owens relating the story of the gun incident at a customer service center. The president's appraisal of Professor Grise-Owens's message was as follows: "In my legal opinion and in the legal opinion of our Corporate Counsel, this e-mail is tantamount to defamation. It places Spalding University in a false light that is potentially damaging to the reputation of the university." After reproducing some of her own previous e-mail messages and pointing out that Professor Grise-Owens did not reply to them, President McClure ended her memorandum with the following paragraph:

It is my position that someone needed to tell this tenured member of the faculty "no," "stop," and "enough." There is nothing in the Faculty Governance document that allows the president to hold a tenured member of the faculty accountable for these types of behaviors. So, the best I can do is to make the Faculty Senate aware of the fact that I consider the original message tantamount to defamation. As president of Spalding University, it is my duty and responsibility to address such egregious and defamatory statements.

In response to several follow-up requests from Professors Grise-Owens and Escobar-Ratliff concerning the complaints they had filed, Ms. Brockhoff wrote on September 22—one day before President McClure sent her memorandum to the faculty senate—to inform the two faculty members that her review had determined that the university had followed "sufficient safety and notification procedures" regarding the incident involving Student X. Professor Escobar-Ratliff responded the next day with an e-mail message expressing strong disagreement with the findings. Three days later

Professor Grise-Owens wrote to Ms. Brockhoff to express support of Professor Escobar-Ratliff's position. Ms. Brockhoff acknowledged receipt of both communications, followed in each case by the statement "This investigation is closed."

Professor Grise-Owens, Professor Escobar-Ratliff, and Ms. Eaves met with the senate on November 11. In their October 25 memorandum to the senate, they had charged as follows:

SU administration learned of a student bringing a gun to campus and making threatening statements. This white student had a documented history of violence, making racially charged statements, and ongoing issues with non-professional behavior. Notably, all white faculty (except a faculty member on Sabbatical) were advised of this danger. Three faculty of color and students in their classes were NOT advised by SU administration of this imminent danger.

Faculty of color and students in their classes were placed at imminent risk, without notification, safety measures, or a plan for immediate or ongoing protection. The University failed to act expeditiously to address this concern and failed to investigate the matter expeditiously and comprehensively. (Emphasis in original.)

Professor Escobar-Ratliff later described the senate meeting in these terms: "The environment in the Faculty Senate was not one of openly and actively listening and dialoguing. The environment was one of blank stares and silence. The discomfort and fear was palpable. President McClure clearly dominated the room and minimized each concern I expressed. It was disheartening and astonishing to experience President McClure being so dismissive of serious concerns when she has never engaged in dialogue with me about my concerns."

On the same day as the senate meeting, Professor Grise-Owens received a package by certified mail at her home. It included the dismissal notice reproduced at the beginning of this report and a seven-page legal document detailing the terms of the settlement and release agreement. It also included a copy of a memorandum signed by Dr. Borders and four other members of the social work faculty and addressed to President McClure, other members of the administration, and the chair of the faculty senate. The memorandum was dated October 13 and titled "Formal Request for Action." Referring to the September 23 memorandum from President McClure to the senate, which

the president had apparently made available to these social work faculty members, it stated: “President McClure used the words ‘no,’ ‘stop,’ and ‘enough’ in regard to Dr. Erlene Grise-Owens’ recent actions related to a student who is currently on medical leave. We are grateful to the President for her courage and insight. We agree, and we support her assessment.” The memorandum continued:

As a majority of the faculty in the School of Social Work, we have endured this and similar behavior on Dr. Grise-Owens’ part throughout the term of our employment at Spalding University (over as much as a decade). Pursuant to her investigation of a hostile work environment, Ms. Jennifer Brockhoff, Human Relations Director, asked each of us to meet with her individually and follow up by submitting detailed written accounts of our experiences. Each of us has submitted detailed documentation of Dr. Grise-Owens’ behavior and incidents related to her abuse of power, bullying, and harassment of colleagues and students in the School of Social Work. . . .

Attempts have been made to resolve this situation within the School of Social Work to no avail. These have included efforts by six School of Social Work chairs over the course of the past ten years to mediate conflict that has divided our department. We also agreed to participate in [mediation with an outside mediator]. . . . Unfortunately, we learned that Dr. Grise-Owens took her complaints to the Faculty Senate within five days . . . of our first meeting with [the mediator] on September 14, 2016. We believe this action, and others since then, demonstrate a lack of commitment to the process on Dr. Grise-Owens’ part. . . . Therefore, we have come to the conclusion that we can no longer participate in a mediating process that is not being approached with honesty, integrity, and authenticity by Dr. Grise-Owens.

Over time, Dr. Grise-Owens’ behavior has escalated. Dealing with her complaints, disagreements, and grievances has absorbed increasing amounts of our individual and collective time and energy. . . .

Currently, we are unable to meet for regular department meetings, plan strategically for the future of the School of Social Work, and live into the mission of the School of Social Work and Spalding University due to the division within our department.

Therefore, we join the President in saying no, stop, enough, not only with regard to the incident to which the President responded, but with regard to Dr. Grise-Owens’ attitude and behavior in general. This. Must. Stop. . . .

We formally request that Spalding University Administration and Faculty Senate take action to stop the bullying and harassment that is preventing us from doing our jobs and living out our mission.

The authors noted that they “did not initiate the investigation” into Professor Grise-Owens’ conduct, but that “it arose from Ms. Brockhoff’s own recognition of a hostile work environment in the course of investigating a complaint brought by Dr. Grise-Owens.”⁶

Both Professor Escobar-Ratliff and Ms. Eaves subsequently resigned. In her letter of resignation, addressed to Provost Berryman and to Mr. Paul Ratterman, chair of the board of trustees, Professor Escobar-Ratliff stated, “I cannot be part of such a system, and I will not be part of a system that continuously models disparity between principles and actions and in so doing puts my life and the lives of my students in harm’s way.” Professor Escobar-Ratliff and Ms. Eaves also filed a complaint with the Council on Social Work Education, which accredits social work programs, over perceived violations of accreditation standards. Their complaint is pending as of this writing.

6. When invited by the AAUP staff to meet with the investigating committee, Dr. Borders responded, “The faculty in the School of Social Work have elected to not participate in this inquiry.” On March 13, Dr. Borders and his four colleagues wrote again “with the intention of clarifying [their] initial response,” stating, (1) that the Spalding administration had not discouraged them from participating, (2) that they were declining to participate because the AAUP had “not provided any information to us about the concerns that spurred your inquiry” (although Dr. Borders had been copied in all the staff’s letters to President McClure), and (3) that they were “in complete support of [their] university administration.” “We stand with [its] decisions unequivocally,” they wrote. On April 10, the Association’s staff sent Dr. Borders, along with the other principal parties, the draft text of this report with an invitation to send comments and corrections by April 17. On April 26, the staff received a six-sentence letter dated April 19 from Dr. Borders and his colleagues. “We categorically deny the findings of the draft report,” they wrote. They requested that their October 13 letter “in support of the University’s actions” be included in this report, along with “all of the content” of their November 11 letter to the faculty senate. They also asked that “all content related to Student X be removed from [the] draft and subsequent versions,” because “[t]he content is inaccurate, not first-hand, and the student can be identified, which is a violation of privacy.”

III. The Association's Involvement

In mid-January 2017, Professor Grise-Owens sought the Association's assistance, and, on January 19, the staff wrote to President McClure to convey the AAUP's concern regarding Professor Grise-Owens's summary dismissal. The letter noted the severe deficiency of Spalding's institutional regulations, which contain provisions only for a hearing conducted by the provost and thus fall short of AAUP-recommended procedural standards, which call for an adjudicative hearing of record before an elected faculty body. It further noted that not even these inadequate procedures were afforded Professor Grise-Owens. The letter urged Professor Grise-Owens's immediate reinstatement as well as future adherence to Association-supported standards. The staff received no reply. On February 6, the staff again wrote to President McClure to request a response and to indicate the likelihood of an investigation if the administration failed to rescind Professor Grise-Owens's dismissal pending an appropriate hearing.

Responding by letter of February 8, President McClure stated, "Since we are not privy to the entire complaint Dr. Grise-Owens filed [with the Association], we are unable to respond to those allegations." The president went on, "I can surmise, however, based upon the snapshot that you shared, that Dr. Grise-Owens' complaint is littered with false, incomplete, and misleading information." On February 13, the staff informed the president by e-mail that the AAUP's executive director had authorized an investigation into the case. On the same day, President McClure wrote back to say that any involvement of the Association in Professor Grise-Owens's case was "premature until her legal case or cases against Spalding University have progressed through the legal systems of the Commonwealth of Kentucky." The staff responded by clarifying that over the years the Association had investigated many cases that were simultaneously in litigation and that it believed it was "acting soundly in promptly pursuing the issues in her case that related to academic principles and procedures rather than waiting until her litigation has run its course." In her reply of February 17, President McClure wrote, "The allegations made by Erlene Grise-Owens are outrageous and they are false. I requested that this member of our faculty cease disparaging a student with false claims. Our former faculty member persisted. She made her case to the Faculty Senate. Five full-time members of the faculty in the School of Social Work testified that Erlene

Grise-Owens had misrepresented the facts." She continued: "There are four individuals on our campus with whom you may not speak: Dr. Joanne Berryman (our Provost), Emily Norris (our Corporate University Counsel), Jennifer Brockhoff (Director of Human Resources), and I decline to be interviewed." President McClure's stated explanation for prohibiting these members of the administration from speaking to the investigating committee was that each of them and the president herself were "party to information that is unflattering to our former employee" that needed to be kept confidential and that would not be provided to the Association "without a subpoena." On February 24, President McClure wrote again to the staff: "If the AAUP, or members of your committee, repeat Erlene Grise-Owens' outrageous and false allegations involving a student to the media, it would constitute both libel and slander."

When Professor Grise-Owens initially offered to provide the administration with a release regarding the aforementioned "unflattering" information, President McClure immediately agreed to meet with the investigating committee. But after President McClure received a copy of the release, she again changed her mind, informing the Association's staff that, because the SU faculty senate had decided at its March 3 meeting not to cooperate with the investigation, she would "follow their lead and not meet with" the investigating committee. On March 14, the undersigned committee traveled to Louisville, where it interviewed five current and former faculty members, including Professor Grise-Owens. The committee regrets that the administration, the faculty of the School of Social Work, and the members of the faculty senate chose not to be interviewed; it nevertheless believes that it has sufficient evidence on which to base its findings and conclusions.⁷

7. Because members of the administration declined to be interviewed, the chair of the committee wrote separately to President McClure and to Chair Ratterman on March 17, inviting them to provide the committee "with any statement" they might "wish to make regarding Professor Grise-Owens's dismissal." The investigating committee chair wrote that the committee would "particularly welcome information regarding when and how the decision to dismiss Professor Grise-Owens was reached, as well as who was involved in the decision." Chair Ratterman did not reply; President McClure did respond on March 27 with a list of several dates of "meetings prompted by Dr. Grise-Owens's defamation of a student," accompanied by copies of three documents, two of which the committee had already seen. The third document was the president's September 23 memorandum to the faculty senate, discussed in further detail below.

IV. The Issues of Concern

The committee confronted three questions. Did the actions taken by the Spalding administration in dismissing Professor Erlene Grise-Owens comport with AAUP-recommended procedural standards? What was the reason for the dismissal? In what ways were Association-supported principles and standards regarding academic freedom, tenure, and governance implicated in her dismissal?

A. Academic Due Process

The 1940 *Statement of Principles on Academic Freedom and Tenure*, jointly formulated by the AAUP and the Association of American Colleges (now the Association of American Colleges and Universities), provides that a faculty member with continuous tenure can be dismissed only after the administration has demonstrated adequate cause for dismissal in an adjudicative hearing of record before a faculty body. Specific procedures are set forth in the *Statement on Procedural Standards in Faculty Dismissal Proceedings*, also jointly formulated with the Association of American Colleges, and, more elaborately, in Regulations 5 and 6 of the *Recommended Institutional Regulations on Academic Freedom and Tenure*. As set forth in these documents, a dismissal proceeding has the following essential elements:

1. A written statement of specific charges
2. A pretermination hearing of record before an elected body of peers
3. The burden of proof resting with the administration
4. The standard of proof based on clear and convincing evidence in the record as a whole
5. The faculty member's right to present evidence and cross-examine witnesses
6. The decision based on the record of the hearing
7. The faculty member's right to appeal an adverse decision to the governing board

The committee finds that Professor Grise-Owens was not afforded any of these procedural safeguards prior to her dismissal.

Article XIII.B of the university's faculty governance document incorporates the following "process of dismissal for faculty":

If allegations are made which, if founded, might be cause for dismissal of a faculty member, the chair first explores the allegations with the faculty member during a period of informal

discussion. The chair submits a written summary to the dean along with a recommendation. . . .

The dean meets with the faculty member in an effort to resolve the matter informally. If unable to resolve the issue informally, the dean informs the faculty member in writing of the charges to be brought and gives notice of a formal hearing before the provost. The provost shall render a decision in the matter up to and including dismissal. After the formal hearing with the provost, the faculty member may request an appeal hearing before the University president, who will make the final determination.

This process is utterly inadequate relative to Association-recommended standards. Yet the Spalding administration failed to follow even these procedures in dismissing Professor Grise-Owens. Her chair did not engage in informal discussion with Professor Grise-Owens about the allegations. The dean did not meet with her in an effort at informal resolution. No one informed her—in writing or orally—of any charges to be brought. She was not afforded a formal hearing before the provost. She was not afforded the opportunity to appeal to the president. In place of all of these steps, President McClure and Provost Berryman simply dismissed Professor Grise-Owens with a few keystrokes.

The committee's answer to the first question, then, is no. The administration did not follow Association-recommended procedural standards or even Spalding's grossly deficient procedures in dismissing Professor Grise-Owens. Indeed, the administration did not afford Professor Grise-Owens any process, let alone academic due process, in effecting her dismissal.

B. The Dismissal of Professor Grise-Owens

Even though it failed to state a cause formally, the administration implicitly offered two competing explanations for dismissing Professor Grise-Owens: (1) her statements about Student X and (to infer from the memorandum of the social work faculty included with her dismissal notice) (2) her purported "abuse of power, bullying, and harassment." In response to the invitation of the chair of the investigating committee to submit written comments to the committee, President McClure alluded to the same two issues, in effect offering both as relevant to Professor Grise-Owens's dismissal.

Regarding the October 13 memorandum from members of the School of Social Work, Professor Grise-Owens informed the AAUP's staff and the

investigating committee that she was surprised by its content and that she disputed the charges against her contained in it. Neither President McClure nor Dr. Borders offered any evidence of the alleged misconduct to either Professor Grise-Owens or the investigating committee. In the absence of such evidence, the investigating committee can only assess the circumstances surrounding the charges. As the memorandum itself indicates, Ms. Brockhoff had invited school faculty members to submit their complaints about Professor Grise-Owens, because the human resources director had identified “a hostile work environment in the course of investigating a complaint brought by Dr. Grise-Owens.” This combination of events suggests that the administration was acting in retaliation against Professor Grise-Owens. That supposition is strengthened by President McClure’s observation in her memorandum to the senate that “[t]here is nothing in the Faculty Governance document that allows the president to hold a tenured member of the faculty accountable” for the statements about Student X. Thus, it appears that the administration solicited complaints from the faculty of the School of Social Work in order to find grounds to dismiss her.

When the investigating committee asked Professor Grise-Owens herself what she believed to be the reasons for her dismissal, she replied, “I did not acquiesce to Tori, I was a message to anyone else [who might think about speaking up], and I was a threat because I wouldn’t be quiet.” In light of the available evidence, the committee believes this succinct appraisal to be accurate.

Other individuals interviewed by the investigating committee concurred with Professor Grise-Owens’s review of the matter. One faculty member provided this explanation for her dismissal: “She wouldn’t follow the status quo that’s dictated by the president.” This individual added an anecdote, which subsequent interviewees also shared with the committee. During one of the recent “community assemblies” held by the administration, she related, the president remarked that “happy presidents have more fun.” The comment was apparently understood by a number of faculty members as a thinly disguised warning to keep the president happy by avoiding criticism of the status quo on campus.

According to another individual, Professor Grise-Owens was dismissed “because she was doing what all tenured faculty should do”—namely, speaking out against institutional policies and practices she deemed

inadequate—and because she was “connected to the marginalized voices.” This faculty member continued, “Erlene was the one to say . . . why don’t we have a more diverse faculty? She asked the critical questions, and taught true social justice and modeled it. . . . She was a leader on campus.”

Two general aspects of this characterization, both of which the interviewees repeatedly returned to, persuaded the committee to accept the above explanation for Professor Grise-Owens’s dismissal. First, there is a fine line at any institution, but especially at a small institution, between a faculty member’s being an outspoken critic of the administration and being considered a “troublemaker” by that administration. E-mail exchanges reviewed by the committee and its interviews suggested that, at least in President McClure’s view, Professor Grise-Owens had recently crossed that line. To return to the language in the president’s September 23 memorandum to the senate: “It is my position that someone needed to tell this tenured member of the faculty ‘no,’ ‘stop,’ and ‘enough.’”

In addition, Professor Grise-Owens concerned herself with what she considered matters of injustice, particularly when it came to race and diversity. As discussed in section II of this report, she and other faculty members suggested that structural racism played a role in the handling of Student X’s perceived threatening behavior. Just as clear from the evidence received by the committee is that race and diversity are tense, even divisive, issues on campus—and issues that appeared to play a significant role in Professor Grise-Owens’s dismissal.⁸

The committee posits that being a critic of the administration (and, at times, her school colleagues) made Professor Grise-Owens a troublemaker in the administration’s view, and her focus on issues of race and diversity only added to that perception. Her response to the incident involving Student X was the proverbial last straw for President McClure.

That response went beyond criticizing the lack of diversity among the faculty or upper administration, concerns that the administration could simply continue to “manage” but not meaningfully address; it also went beyond allegations of differential treatment of white students as opposed to students of color in the School of Social Work, which the school chair

8. It is worth noting that a number of interviewees lamented the university’s difficulty in recruiting and retaining faculty and administrators of color, a trend that has not helped alleviate the strain on campus regarding race.

could continue to ignore. A student with a troubled history had brought a gun to a campus parking lot and had made what could reasonably be interpreted as a threat, a potentially explosive situation about which the faculty of color, who the next evening were in the same building with Student X, had not been alerted. Public disclosure of this incident could have brought negative national attention to a small Catholic institution that happened to be in the middle of a \$30 million capital campaign. The quickest and cleanest way to make the situation disappear, the president seems to have concluded, was to dismiss the tenured faculty member who continued to make noise about it. The committee therefore concurs with one interviewee's observation that Professor Grise-Owens "was representing marginalized voices, and she paid for it."

While the investigating committee believes that Professor Grise-Owens's statements regarding the incident involving Student X were the principal reason for her dismissal, it disagrees with President McClure's characterization of them as "disparaging a student with false claims" or as "plac[ing] Spalding University in a false light that is potentially damaging to the reputation of the university." The committee reviewed a great deal of documentation about the Student X incident. The committee did not see in these materials, or hear during its interviews, any evidence that Professor Grise-Owens made a single false claim about Student X or about the response by the administration to the incident. It further fails to see how Professor Grise-Owens's alleged conduct in this matter would qualify as grounds for dismissal either under AAUP-approved standards or under the standards established at Spalding University.

Regulation 5a of the *Recommended Institutional Regulations* states: "Adequate cause for a dismissal will be related, directly and substantially, to the fitness of faculty members in their professional capacities as teachers or researchers." The committee received no evidence questioning Professor Grise-Owens's fitness as a teacher or researcher. The statements of Professor Grise-Owens did not, in the committee's view, implicate her professional fitness. According to Article XIII.A of Spalding's faculty governance document, cause for dismissal of a faculty member includes "(1) professional incompetence, (2) incapacity, (3) acts of moral turpitude, (4) sexual harassment, (5) felony violations of the law, (6) serious neglect of duty, (7) dishonesty in teaching or in research, (8) falsification of personal or professional credentials, and/or (9)

other violations of terms of the contract." Professor Grise-Owens's statements cannot reasonably be construed as falling into any of these categories.

C. Academic Freedom and Tenure

Based on the foregoing analysis, the committee further concludes that Professor Grise-Owens was dismissed in violation of her academic freedom. Two separate aspects of academic freedom were involved in her dismissal: speaking on matters of institutional governance and speaking in defense of her untenured colleagues' academic freedom.

The 1940 *Statement* explicitly enumerates only "freedom of teaching and research and of extramural activities" as constitutive elements of the definition of academic freedom, although the Association recognized, both before and after the formulation of the 1940 *Statement*, that the freedom "to address any matter of institutional policy or action whether or not as a member of an agency of institutional governance" is a separate constitutive element of academic freedom. The 1994 statement *On the Relationship of Faculty Governance to Academic Freedom* observes that "[t]he academic freedom of faculty members includes the freedom to express their views . . . on matters having to do with their institution and its policies," and the AAUP's 2009 report, *Protecting an Independent Faculty Voice: Academic Freedom after Garcetti v. Ceballos*, stresses the need to incorporate into faculty handbooks and collective bargaining agreements definitions of academic freedom that explicitly recognize this constitutive element.⁹

In fact, Article III.F of Spalding's faculty governance document asserts that academic freedom includes the freedom to "seek changes in academic and institutional policies through lawful, just and peaceful means." In addition, the section of Article

9. As a historical note regarding the development of the Association's position on this issue, the report of the 1922 investigation of the University of Missouri asked but did not answer whether the Association's definition of academic freedom should be enlarged to include criticism of "acts of the administrative officers of the University." The 1933 investigative report on Rollins College argued that it should be so enlarged. It has been asserted that the 1940 *Statement's* characterization of faculty members as "officers of an educational institution" implies the inclusion of speech on matters of governance as a constitutive element of academic freedom (see, for example, Matthew W. Finkin and Robert C. Post, *For the Common Good* [New Haven, CT: Yale University Press, 2009]: 123–24). *Protecting an Independent Faculty Voice* makes the case that speech on matters of governance should be explicitly included in definitions of academic freedom.

III.F titled “University Commitment to Academic Freedom” states, in part, that “academic freedom promotes the spirit of inquiry and discussion required of a free society. The protections of academic freedom extend to all levels of faculty responsibility and are not restricted to activities identified with specific instructional research or service programs. The institution of academic tenure has an important role in the preservation of academic freedom.” Professor Grise-Owens, like all other Spalding faculty, should have been protected by these provisions of the university’s faculty governance document. Based on the analysis presented in the preceding section of this report, the committee concludes that she was not.

The second aspect of academic freedom involved in this case was explicitly raised by Professor Grise-Owens herself when in her March 7, 2016, e-mail message she noted that her “senior and tenured status” provided her with “a certain amount of protection” in complaining about the incident involving Student X. As the investigating committee observed in its 1975 report on the Virginia Community College System, “the Association is witness, through countless examples over many years, to the fact that a strong tenured faculty is a vital element not only in assuring academic freedom but in protecting the rights of nontenured colleagues.” Thus, tenure serves to protect the academic freedom not only of those who have tenure, but also of those who do not. In 1964, former AAUP president Fritz Machlup noted that “the exercise of academic freedom has many facets; it goes far beyond the scientist’s much heralded search for scientific truth.” Adding that “the less sublime aspects of academic freedom are not sufficiently noted,” Machlup identified as an exercise of academic freedom a faculty member’s “coming to the aid of any of his [or her] colleagues whose academic freedom is in jeopardy.”¹⁰ The above analysis leads to the conclusion that Professor Grise-Owens’s dismissal was related, at least in part, to her defense of the academic freedom of her untenured colleagues. The committee maintains that if she had not involved herself in behalf of her untenured colleagues in the matter of Student X, she probably would not have been dismissed.

In an effort to assess the general climate for academic freedom at the university, the committee posed a specific question to each interviewee: How

can conditions for academic freedom at Spalding best be described? One interviewee said, “The climate is to protect yourself and not get out of line.” Another explained, “If [what you say] is going to reflect negatively on the institution, you’re going to have problems. But as long as it’s got nothing to do with the institution, it’s open.” Another interviewee pointed specifically to the “lack of leadership in the School of Social Work” as “compromis[ing] academic freedom” in the aftermath of Professor Grise-Owens’s removal as director of the master of social work program. The same person continued: “At its core, it’s a leadership issue—keeping warm bodies in chairs [and] keeping enrollment up compromises expectations. It creates a ‘go along to get along’ mentality.”

Spalding University’s website describes the campus as being characterized by a “spirit of inclusiveness and compassion.” Standing in stark contrast are the words of one current faculty member, who told the undersigned committee, “I don’t exaggerate things, but there’s a lot of stuff at Spalding that’s pretty gross.” The committee finds that Professor Erlene Grise-Owens’s summary dismissal, far from being carried out in accordance with the university’s self-characterization, brought to light a variety of “gross” aspects of institutional culture. Allegations of bullying and harassment—by faculty members and administrators alike—appear to be disturbingly frequent at Spalding. Worse, they are met not with constructive dialogue but with counter-allegations of bullying and harassment. Accusations (and counter-accusations) of “bullying” in particular—one way of branding unpopular or oppositional speech—have the potential to restrict academic freedom. At Spalding, such allegations have recently been intertwined with the equally significant—and largely undiscussed—issues of race and diversity on campus. The tensions surrounding these matters are unlikely to be eased under the current administration.

The committee finds that Professor Grise-Owens’s dismissal had the likely effect not only of eliminating a perceived “troublemaker” but also of significantly chilling even further the climate for academic freedom at Spalding. One interviewee explained that “the dismissal of Erlene has a lot of people on edge,” adding a crucial question: “What protections are there?” The committee found none in this case. The committee therefore concurs with another interviewee, who asserted that President McClure’s dismissal of Professor Grise-Owens “sent a message” to the rest of the

10. Fritz Machlup, “In Defense of Academic Tenure,” *AAUP Bulletin* 50, no. 2 (June 1964): 120.

faculty about the potential consequences of criticizing the administration.¹¹

D. Academic Governance

The *Statement on Government of Colleges and Universities*, jointly formulated by the AAUP, the American Council on Education, and the Association of Governing Boards of Universities and Colleges, sets forth principles and standards for faculty participation in academic governance.

Section 5 of the *Statement on Government* assigns 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.” The area of faculty status and related matters includes “appointments, reappointments, decisions not to reappoint, promotions, the granting of tenure, and dismissal.” This section continues: “Determination in these matters should first be by faculty action through established procedures. . . . The governing board and president should, on questions of faculty status, as in other matters where the faculty has primary responsibility, concur with the faculty judgment except in rare instances and for compelling reasons which should be stated in detail.” These principles are reflected in those portions of the Association’s procedural standards on academic freedom and tenure that stipulate the faculty’s role in dismissal procedures.

As noted earlier in this report, the manner in which Professor Grise-Owens was dismissed was devoid of “faculty action.” Instead, the president summarily dismissed her in the middle of a semester in complete disregard of the normative principles and standards of academic governance articulated in the *Statement on Government*. As such, her dismissal demonstrates that Spalding’s current president unilaterally determines faculty status when she wishes to do so.

Enabling such presidential action are “weak-kneed” deans and chairs, as interviewees called them. Their collective weakness stems in no small part from the fact that both groups, according to the faculty governance document, “shall be appointed by and serve at the pleasure of the University president.” The

deans, chairs, and even the provost are viewed by at least some faculty as powerless in President McClure’s administration.¹² One interviewee explained that “people in administrative leadership are there because they don’t cause problems.” Others commented that faculty members refer to the president’s leadership group as “Team Tori,” a sort of personal booster club. The president also enjoys popularity and support in the Louisville community where, as interviewees put it, she is “a local celebrity.” The president’s “forceful personality,” to use one faculty member’s description, combined with the support she enjoys, enables President McClure to wield a great deal of power.

The president’s power does not appear to be actively checked by the board of trustees. The *Statement on Government* identifies the governing board, along with the administration and the faculty, as one of the components responsible for “joint planning and effort” in regard to the institution and as having an “inescapable interdependence” with the administration and faculty. Because the chair of Spalding’s board did not respond to staff or committee communications, the committee does not know the board’s role—or whether it had a role—in Professor Grise-Owens’s dismissal; but the committee heard very little mention, either before or during its campus visit, of the governing board. The few interviewees who did comment on the board referred to its “low activity” as allowing even more power to shift to the president. Indicative of that power was President McClure’s reported remark within earshot of a number of faculty members that “there might be some people on the board who don’t want me here, but I’ll be here.”

The role of the faculty senate and its relationship to President McClure provide further indication of conditions for governance at Spalding: every individual with whom the committee spoke about the functioning of the senate expressed the belief that the president dominates the senate and its meetings. One interviewee with direct knowledge offered these thoughts on how the senate functions: “Not very effectively, frankly. It’s not strong. I don’t perceive it to be independent because of the culture at Spalding but also [because of] senate procedures.” Regarding the latter, this individual pointed specifically to the president and provost holding ex officio membership and attending the entirety of senate meetings. Another interviewee

11. The fact that the senate president did not raise any objection to the administration’s summary dismissal of a tenured colleague—and did not respond to the staff’s invitation to meet with the investigating committee—strikes the committee as ample evidence that the faculty received President McClure’s “message” loudly and clearly.

12. It is worth noting, as another indication of governance conditions at Spalding, that none of the interviewees whom the committee asked was able to tell us whether Provost Berryman has tenure.

dismissed the senate outright as “a farce . . . a complete farce.” A third explained that “the president uses the faculty senate to bludgeon people.” Based on the account of Professor Escobar-Ratliff in section II of this report, as well as corroboration by interviewees, such appears to have been the experience of Professor Grise-Owens and Ms. Eaves at the November 11 senate meeting. One individual equated attending the meeting with “facing a firing squad.”

The committee notes that these are precisely the governance conditions under which the administration could dismiss a tenured member of the faculty without due process and in the absence of adequate cause. When the administration can bypass the faculty entirely on such a basic matter of faculty status, as Spalding’s administration did in dismissing Professor Grise-Owens from her tenured position, the state of academic governance must be characterized as entirely at odds with the principles and standards articulated in the *Statement on Government*. In light of the foregoing analysis, the committee concurs with the interviewee who characterized governance at Spalding University “as abysmal, and, to some extent, the administration intentionally keeps it that way.” The committee saw no indication that the situation would improve in the near future. In fact, a tenured member of the faculty with whom the committee spoke admitted to recently having taken a less active role in academic governance out of a concern for “falling further into the Erlene camp of being perceived as a troublemaker.”

Of course, the role of the president in institutional governance is critical. “The president,” reads the *Statement on Government*, “as the chief executive officer of an institution of higher education, is measured largely by his or her capacity for institutional leadership.” More specifically, it observes that “[i]t is the duty of the president to see to it that the standards and procedures in operational use within the college or university conform to the policy established by the governing board and to the standards of sound academic practice.” This report has provided a measure of President McClure’s capacity for institutional leadership and of the performance of her duties vis-à-vis academic freedom and tenure, governance, and due process. In these areas of central interest to the Association, and especially as they are implicated in the case of Professor Grise-Owens, the committee finds the president to have failed.

V. Conclusions

1. In dismissing Professor Grise-Owens without even a semblance of academic due process, the administration of Spalding University—and President McClure in particular—violated basic tenets of the joint 1940 *Statement of Principles on Academic Freedom and Tenure* and derivative standards set forth in the joint *Statement on Procedural Standards in Faculty Dismissal Proceedings* and in Regulation 5 of the *Recommended Institutional Regulations on Academic Freedom and Tenure*.
2. The committee finds that Professor Grise-Owens’s dismissal came as the direct result of her having questioned and criticized the administration’s handling of an incident in which a student with a troubled history brought a gun to a campus parking lot and made what could reasonably be interpreted as a threat. Professor Grise-Owens’s involvement in the matter came in behalf of untenured colleagues who felt invisible and ignored as faculty members of color and as faculty members lacking the protections of tenure. Professor Grise-Owens was therefore dismissed in violation of her academic freedom. In taking this action, the administration publicly damaged the institution of tenure and, by extension, further chilled the climate for academic freedom at the university.
3. Spalding’s administration also acted in willful disregard of normative standards of academic governance, as set forth in the *Statement on Government of Colleges and Universities*, and ignored the process for faculty dismissal outlined in the university’s faculty governance document. Academic governance cannot function at an institution at which the president can unilaterally dismiss a tenured full professor without formally stated cause. Academic governance at Spalding does not appear to function, marked as it is by an inactive board, an ineffectual faculty senate apparently controlled by the administration, and a president who exerts an undue amount of power. Under President McClure’s administration, the future of governance at the university is bleak.¹³ ■

13. Having received the draft text of this report with an invitation for comment and corrections, President McClure and the university’s general counsel responded by letter of April 26, reproduced here in full:

The Academic Freedom and Tenure: Spalding University (Kentucky) report is replete with misstatements, half-truths, and inexact facts.

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MICHAEL DECESARE (Sociology)
Merrimack College, *chair*

RACHEL BUFF (History)
University of Wisconsin, Milwaukee

EMILY HOUH (Law)
University of Cincinnati

Investigating Committee

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*.

Chair: **HENRY REICHMAN** (History), California State University, East Bay

Members: **MICHAEL BÉRUBÉ** (English), Pennsylvania State University; **DON M. ERON** (Writing and Rhetoric), University of Colorado; **JEFFREY A. HALPERN** (Sociology), Rider University; **MARJORIE HEINS** (Law), New York, NY; **MICHAEL E. MANN** (Meteorology), Pennsylvania State University; **WALTER BENN MICHAELS** (English), University of Illinois at Chicago; **DEBRA NAILS** (Philosophy), Michigan State University; **JOAN WALLACH SCOTT** (History), Institute for Advanced Study; **DONNA YOUNG** (Law), Albany Law School; **RUDY H. FICHTENBAUM** (Economics), Wright State University, *ex officio*; **RISA L. LIEBERWITZ** (Law), Cornell University, *ex officio*; **JULIE M. SCHMID** (English), AAUP Washington Office, *ex officio*; **JOAN E. BERTIN** (Public Health), Columbia University, *consultant*; **JAMES TURK** (Sociology), Ryerson University, *consultant*; **IRENE T. MULVEY** (Mathematics), Fairfield University, *liaison from the Assembly of State Conferences*

While the entire report is not worthy of publication, as it is based, by your own acknowledgement, on the accounts of five individuals (at least three of whom were disgruntled when they left employment with the University), any references to Student X in the report must be removed. The information that you included in your report was derived from confidential FERPA-protected documents and no one was at liberty to share such information with you or your investigatory committee. Moreover, the interpretation of said documentation is inaccurate and misrepresents the actual facts concerning Student X. We appreciate your immediate attention to this matter.
