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education. As you are aware, the understanding of academic freedom and tenure prevalent in American higher education derives from 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 254 scholarly societies and other higher-education groups. As the 1940 *Statement* famously states, “The common good depends upon the free search for truth and its free exposition.” Under the 1940 *Statement*, tenure—understood as an indefinite appointment terminable only for cause “or under extraordinary circumstances because of financial exigency”—is the means of protecting academic freedom in teaching, scholarship, and intramural and extramural speech. The underlying premise is, of course, that faculty members whose

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*Manual* is already less stringent than the AAUP standard;<sup>3</sup> the COVID exception policy would allow administrations to circumvent even this weaker definition. The AAUP regards its recommended financial exigency standards as the only legitimate basis for terminating faculty appointments for financial reasons and would therefore consider illegitimate any terminations for financial reasons absent a bona fide condition of financial exigency, as defined in Regulation 4c.

## **2. Faculty Involvement**

The procedural standards of Regulation 4c require meaningful faculty participation in every phase of decision-making related

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The AAUP would regard as illegitimate an action to terminate appointments for financial reasons that resulted from a process that disregarded these widely observed standards of academic governance.

### **3. Right to a Hearing**

Regulation 4c(3) requires that affected faculty members be afforded, prior to termination, “an on-the-record adjudicative hearing” before an elected faculty body similar in basic respects to what the AAUP recommends for dismissal (see Regulation 5, “Dismissal Procedures”)



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The board of regents' COVID exception policy does not guarantee notice or severance rights to faculty members whose appointments are terminated, which leaves open the possibility that their university's framework might deny them these rights.

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The COVID-19 pandemic has had significant repercussions for higher education across the country.<sup>5</sup> However, Association-supported principles and standards have demonstrated their value in helping governing boards, administrations, and faculty to work together not only during good times but also during crises. As the Association noted in its 2006 investigative report on the effects of Hurricane Katrina,

The relevant AAUP-supported policies—most notably those that recognize the special challenge of “financial exigency”—are sufficiently broad and flexible to accommodate even the inconceivable disaster. These policies have, in fact, been successfully invoked (as documented through AAUP experience) by institutions in situations that, while perhaps not matching the gravity of those in New Orleans in fall 2005, surpassed in severity the [situations] imagined” by the authors of these policies.

As explained above, the Kansas Board of Regents COVID exception policy appears to be fundamentally at odds with Association-supported principles and standards. Under its provisions, an administration could adopt a framework permitting the termination of faculty appointments on a financial basis that fell far short of a bona fide financial exigency, as the AAUP defines it. An administration could also decline to provide the faculty with the opportunity to participate meaningfully in decisions critical to faculty welfare and the institution's academic mission.

Of even more basic concern to our Association is that the board policy, by depriving faculty members of the due-process protections without which tenure, as the AAUP understands it, does not exist, effectively eliminates tenure at any institution that adopts it. While some regard tenure as an exalted faculty status separable from the due-process

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name only and, in the view of our Association, would not be entitled to represent itself as having one.

We hope that these comments prove useful to you and your colleagues. Please keep us informed of any developments as we continue to monitor the situation.

Sincerely,



Mark Criley

Program Officer

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Enclosures by electronic mail

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