

May 25, 2018

VIA U.S. MAIL AND EMAIL [legal.dept@aaup.org](mailto:legal.dept@aaup.org)

Aaron Nisenson  
Senior Counsel, American Association of University Professors  
1133 Nineteenth St., NW, Suite 200  
Washington, DC 20036

RE: University of Nebraska-Lincoln, May 2018 Report


Mr. Nisenson:

Our office is in receipt of the May 2018 report issued by the American Association of University Professors ("AAUP") entitled "Academic Freedom and Tenure: University of Nebraska-Lincoln" (the "Report"). I am writing to express our concern that the Report contains several misstatements and omissions of fact that were not corrected, despite the AAUP's receipt of the attached April 17, 2018 letter from University of Nebraska-Lincoln ("UNL") Chancellor Ronnie Green. Although portions of Chancellor Green's letter were included as footnotes to the Report, changes were not made to the text of the Report and the corrections identified by UNL were not considered by the AAUP during its evaluation. The AAUP's reliance upon misleading and inaccurate information in reaching the conclusions set forth in the Report is improper and has unnecessarily subjected UNL to reputational damage.

Misstatements and omissions of fact are made throughout the Report. In particular, the continued references within the text of the Report to the "suspension" and "summary dismissal" of Ms. Lawton are factually inaccurate. As stated in Chancellor Green's correspondence, Ms. Lawton was reassigned in response to a concern for the safety of Ms. Lawton and her students, a concern that Ms. Lawton herself expressed. Ms. Lawton was not dismissed prior to the end of her academic appointment – and, in fact, served the full duration of that appointment – and had the opportunity to contest her reassignment consistent with UNL standards and processes. The Report fails to acknowledge the availability of this opportunity and Ms. Lawton's decision not to avail herself of such opportunity. The attached correspondence from Chancellor Green provides additional detail and information on these issues as well as other misleading elements of the Report.

I respectfully request that the AAUP re-evaluate its conclusions in the matter of Ms. Lawton based on a review of the complete and correct factual situation and that a revised publication be issued to correct the inaccuracies in the Report. If you have questions or need additional information, please feel free to contact me at 402-472-1201 or [slpalser@nebraska.edu](mailto:slpalser@nebraska.edu).

Very truly yours,



Stacia L. Palser  
Interim Vice President and General Counsel

Attachment

April 17, 2018

Hans-Joerg Tiede, Associate Secretary  
American Association of University Professors  
1133 19<sup>th</sup> Street, NW Suite 200  
Washington, D.C. 20036

**via Hand Delivery**

Dear Dr. Tiede:

The American Association of University Professors (the "Association" or "AAUP") has provided the Office of the Chancellor of University of Nebraska-Lincoln (the "University") with a revised version of a draft report, dated April 2, 2018, prepared by an ad hoc investigative committee for consideration by the Association's Committee A on Academic Freedom and Tenure (the "Draft Report" or "DR"). You have asked for comments and corrections on or before today's date. Following is the University's response.

**I. Correction of Misstatements or Omissions of Fact.**

As you know from our previous correspondence, the University is constrained from fully responding to confidential personnel matters, including matters involving the employment of a graduate student, Courtney Lawton ("Ms. Lawton"). Notwithstanding this limitation, the University has previously cited misstatements or omissions of fact contained in your letters of September 13, November 28, December 7 and December 19, 2017. Nevertheless, many of these misstatements and omissions have been repeated in the Draft Report.

1. General Comment.

The Draft Report contains instances, too numerous to accurately catalog, of improper characterizations of supposed "facts." By way of example only, the University would direct your attention to the repeated mischaracterization of the reassignment of Ms. Lawton's duties on September 5, 2017 as a "suspension." (i.e., DR 4:22-5:18).

It is our understanding that the investigating committee was provided a copy of Ms. Lawton's letter to Dr. Donde Plowman, Executive Vice Chancellor and Chief Academic Officer, dated September 11, 2017. In her letter, Ms. Lawton writes "I am grateful that because of your concern for my safety and the safety of my students you removed me from the classroom..." The timing of Ms. Lawton's expression of gratitude is important. This letter was written *after* Ms. Lawton's September 1, 2017 meeting with campus police regarding her personal security (i.e., DR 4:20-21); *after* a campus police officer's email threat assessment (DR 5:4-5); *after* Ms. Lawton's September 5, 2017 meeting with Dr. Plowman regarding the removal of Ms. Lawton's teaching responsibilities (DR

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4:20-21); and *after* a supposed “letter of reprimand” from Dr. Plowman dated September 6, 2017 (DR 5:9-18). Far from raising “no objection” to a “suspension” (DR 5:3-4), Ms. Lawton clearly did not consider herself to have been “suspended” on September 11, 2017. In the face of this record, repeated references to a “suspension,” (and the campus police officer’s neutral threat assessment (DR 14:17-15:3)), are misleading and prejudicial at best and may call into question the fairness of the investigatory process.

2. Courtney Lawton’s Employment Status.

A. *Appointment as Teaching Assistant/Lecturer.*

Ms. Lawton was first offered a Teaching Assistantship at the University for the 2012-2013 academic year. A copy of the April 27, 2012 offer letter is attached as Exhibit A. The letter refers to the University’s practice of appointing students in good standing as graduate assistants “through their fifth year in our graduate program.” In fact, because she required additional time to complete the requirements for her degree, Ms. Lawton received an appointment for her sixth year in the University’s graduate program. This letter, dated August 10, 2017 (Exhibit B), offers a “Special Appointment as a non-tenure track Lecturer of English for the period from August 14, 2017 to May 11, 2018.” This part-time appointment (.50 fulltime equivalent) is subject to the Bylaws of the Board of Regents of the University of Nebraska (the “Bylaws”). The Bylaws may be found at <https://nebraska.edu/bylaws-and-policies.html>.

B. *Continuation of Appointment and Duties.*

Special Appointments are governed by Sections 4.4.1 and 4.7.1 of the Bylaws. Appointments to the rank of lecturer or senior lecturer must be Special Appointments. A Special Appointment generally terminates in accordance with the time stated in the appointment and may be terminated *prior* to the expiration of the stated term only for adequate cause, retirement for age or disability, discontinuation of a program of department or financial exigency.

As a matter of *fact*, Ms. Lawton’s Special Appointment has not been terminated. Ms. Lawton continues to receive her 2017-2018 academic year salary and has not suffered any loss of compensation or benefits. With the removal of classroom responsibilities, the Chair of the Department of English, Dr. Marco Abel, asked Ms. Lawton to research academic freedom and free speech concerns at peer institutions, including Big Ten and Big 12 universities. Ms. Lawton has been performing these assigned duties.

## **II. Improper and Erroneous Conclusions.**

The Draft Report draws three equally unsupported conclusions. First, the Draft Report asserts the University “summarily dismissed” Ms. Lawton when it “suspended” her from teaching. Second, the Draft Report asserts the University violated Regulation 5c(8) of the *Recommended Institutional Regulations on Academic Freedom and Tenure* by offering a grievance process where Ms. Lawton would have to demonstrate she should not have been dismissed. Finally, the Draft Report reaches the “unrebutted” conclusion that Ms. Lawton’s alleged dismissal was related to conduct protected under principles of academic freedom. These conclusions are addressed in turn.

### **1. Summary Dismissal.**

Having improperly characterized Ms. Lawton’s reassignment of duties as a “suspension,” the Draft Report bootstraps this mischaracterization into a “summary dismissal.” In doing so, the ad hoc committee constructs its conclusion upon the precarious foundation exposed in Section I.1 above.

### **2. Grievance Process.**

The Draft Report asserts the University violated AAUP standards in offering Ms. Lawton an inadequate grievance process:

AAUP-recommended standards of academic due process, as set forth in...Regulation 5 of the AAUP’s *Recommended Institutional Regulations on Academic Freedom and Tenure*, require that an administration demonstrate adequate cause for dismissal in a pre-termination adjudicative proceeding before a duly constituted faculty hearing body. These standards apply not only to faculty members on indefinite tenure but also to teachers on term appointments when their dismissal is sought before their appointments expire...the administration did suggest to Ms. Lawton the procedural remedy of filing a grievance through the Special Academic Freedom and Tenure-A Committees... However, under the *Code of Procedures for Special Academic Freedom & Tenure-A (AFT-A) Committees*, “[t]he complainant bears the burden of proving relevant facts by a preponderance of the relevant evidence.” Thus the procedural remedy offered by the administration falls far short of Association-supported standards. (DR 17:3-18:2).

This conclusion ignores the representations of the University and the Associations' own regulations.

*A. The University Offered to Assume the Burden of Proof.*

The University's December 21, 2017 response to your letter of December 19, 2017 indicates the University would "look favorably" upon assuming the burden of proof in a grievance proceeding before a faculty academic rights and responsibilities committee. Your December 21 response rejects such an approach, in favor of an ad hoc committee investigation, expressing disappointment that the University is "unable to confirm that the process to be afforded Ms. Lawton will be consistent with Association-supported standards." Following this lead, the Draft Report makes no mention of the University's proposal in finding a violation of Regulation 5c(8). (DR 12:18-22).

*B. The Regulation 5 Procedures Do Not Apply in All Respects.*

To the extent the Association's concerns over process focus on a particular forum or committee deemed required by Regulation 5, those concerns are misplaced. The Draft Report actually makes no mention of the AAUP standards which control the employment of graduate students such as Ms. Lawton. Regulation 14 of the *Recommended Institutional Regulations on Academic Freedom and Tenure* provides in relevant part:

14. Graduate Student Employees...In a case of dismissal before the end of the period of an academic or professional appointment, the graduate student employee will be provided with a statement of reasons for the action and will have the right to a pre-termination hearing before a duly constituted committee. *The hearing need not conform in all respects with a proceeding conducted pursuant to Regulation 5*, but the essentials of an on-the-record adjudicative hearing will be observed. In such a hearing, the administration will have the burden of showing adequate cause for dismissal...

Once again, the University disputes Ms. Lawton has been dismissed before the end her academic appointment. However, even if that were the case, the University has proposed a process, consistent with the institutional regulations in place at the University of Nebraska<sup>1</sup>, which would fully meet the standard set out in Regulation 14.

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<sup>1</sup> See, *Bylaws of the Board of Regents of the University of Nebraska* Section 4.14.2(a) and (c) (January 25, 2018).

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3. Protected Conduct.

The Association unreasonably refused to accept the use of appropriate grievance procedures suggested by the University. The Draft Report leverages this refusal into a conclusion that Ms. Lawton was dismissed as a result of protected conduct. However, the Draft Report concedes its finding of protected conduct stands “unrebutted” absent a hearing. The Draft Report’s unsupported conclusion should not be sustained. A determination of protected conduct should be made in an appropriate proceeding, such as a proceeding suggested by the University.

**III. Conclusion.**

A member of the AAUP’s Committee A on Academic Freedom and Tenure recently wrote, in an article entitled *Investigative Procedures in Academic Freedom and Tenure Cases*, “[a]n investigation is rare, and it should be rare. Most appeals for help and complaints of unfairness to the association can be addressed under local grievance procedures or with the assistance of chapter officers knowledgeable about navigating an institution’s regulations.” We would urge the Association to reconsider its view of the University’s grievance resolution procedures, in light of the application of the appropriate standards from the *Recommended Institutional Regulations on Academic Freedom and Tenure* and the University’s willingness to assume a burden of proof. We further urge the Association to reconsider the improper characterization of facts and resulting conclusions contained in the Draft Report.

Sincerely,

Ronnie D. Green, Ph.D.  
Chancellor