

July 10, 2019

VIA ELECTRONIC MAIL AND USPS

Dr. Dwight A. McBride
Provost and Executive Vice President for Academic Affairs
Emory University
201 Dowman Drive
Atlanta, Georgia 30322

Dear Provost McBride:

Thank you for your letter of June 14 responding to our May 15 letter to President Sterk regarding the summary suspension of Professor Paul J. Zwier.

While declining to offer specific comment on the concerns conveyed in our letter, you state that Emory University is committed to academic freedom. You also state that the university “affirms values of diversity, inclusion, and community” as well as “civility and mutual respect,” adding that the administration expects “all members of the Community to consider these values carefully when exercising their rights to open expression.” “Faculty members,” you write, “must exercise special care in this regard” because of the obligations of professional ethics, and you quote the same passage from the AAUP’s *Statement on Professional Ethics* that we had quoted in our letter.

However, your letter provides no additional information that might indicate that Professor Zwier’s conduct was at odds with AAUP-supported principles of professional ethics or that his use of the n-word in the classroom was not germane to his pedagogical purpose. Your letter therefore provides us with no basis for revising our original position regarding the substance of Professor Zwier’s case and, in particular, the academic freedom implications.

With respect to academic due process, you cite the institution’s regulations governing faculty dismissal proceedings. We have reviewed those regulations and have found them to comport in most essential respects with Regulation 5 of the AAUP’s *Recommended Institutional Regulations on Academic Freedom and Tenure*, from which they are evidently derived.

These procedures have been invoked by Interim Dean Hughes, who, in a lengthy June 10 letter to Professor Aryeh Stein, chair of the university’s Faculty Hearing Committee, outlines grounds for terminating Professor Zwier’s tenured appointment:

In addition to violating Emory’s Discriminatory Harassment Policy, it is evident that Professor Zwier has violated Emory’s standards of conduct (Policy 4.62) by engaging in “inappropriate, disruptive, discourteous, or irregular behavior adversely affecting students, employees, patients, or visitors.” More importantly, Professor Zwier’s second

use of the racial slur demonstrates extremely poor judgment, and both that incident and his recent letter to the committee [requesting a hearing on the suspension] cast doubt on the sincerity of his apology and his fitness for continued service.

In the following paragraphs, the interim dean elaborates on the adverse effects of Professor Zwier's two uses of the n-word:

In my 27 years on the Emory Law School faculty, I have never experienced the level of disruption and turmoil that has been created by Professor Zwier's actions. Indeed, many students of color have been reluctant to engage in efforts to recruit other minority students to Emory Law School, and some have indicated a desire to transfer out of Emory Law. Moreover, the incident has had an overwhelmingly negative impact on the reputation of the Law School.

Citing the grounds for dismissal set out in the university's Gray Book—"moral delinquency, neglect of academic duty, incompetence, [and] permanent physical or mental incapacity . . . or other such adequate cause"—the interim dean asserts that Professor Zwier's speech constituted "incompetence," "moral delinquency," and "other such adequate cause."

"In sum," he writes, Professor Zwier "lacks the demeanor necessary to exercise his professional responsibilities as an educator, colleague, and citizen of Emory University. His judgment appears to be so poor, and his ability to communicate appropriately with students seems to be so impaired, that he cannot be trusted to refrain from using the racial slur or other derogatory language again in the future."

* * *

The dean's letter raises substantive issues that demand further comment. First, under Regulation 5a of the *Recommended Institutional Regulations*, arguably Regulation 5's most fundamental provision, "[a]dequate cause for a dismissal will be related, directly and substantially, to the fitness of faculty members in their professional capacities as teachers or researchers. Dismissal will not be used to restrain faculty members in their exercise of academic freedom or other rights of American citizens." The AAUP accordingly takes the position that, with regard to dismissal, considerations not related to professional fitness are impermissible. Our reports of case investigations are replete with accounts of professors dismissed for cause in violation of their academic freedom because their administrations held them accountable for bad publicity, reputational harm, adverse effects on student recruitment and retention, alumni dissatisfaction, and the like. Second, in its discussions of harassment, the AAUP has taken the position that in order for classroom speech to be regarded as contributing to a hostile environment and thus not protected under principles of academic freedom, the offending language must be "persistent, pervasive, and not germane to the subject matter" (see *Sexual Harassment: Suggested Policy and Procedures for Handling Complaints*). Third, as we emphasized in our May 15 letter, while the AAUP opposes harassing and discriminatory treatment of students, it also takes the position that ideas relevant to the topics being discussed in a class cannot be suppressed only because students might find them offensive.

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In short, our Association views Professor Zwier's speech as protected under principles of academic freedom, notwithstanding any repercussions of that speech. Because Dean Hughes's dismissal recommendation appears to be founded on Professor Zwier's two uses of the n-word, the stated ground for dismissal is impermissible under AAUP-supported principles of academic freedom. We would therefore urge the administration, having failed to identify legitimate grounds for dismissing him, to cease its dismissal action against Professor Zwier. In the meantime, if the administration intends to continue Professor Zwier's suspension, now in its ninth month, AAUP-recommended procedural standards require that he be afforded a faculty hearing in which the administration would be obliged to demonstrate adequate cause for doing so.

As the issues posed by Professor Zwier's case are of central concern to our Association, we will continue to monitor developments with keen interest.

Sincerely,



Gregory F. Scholtz, Director

Department of Academic Freedom, Tenure, and Governance

Cc: Dr. Claire E. Sterk, President
Mr. James B. Hughes Jr., Interim Dean, Emory University School of Law
Professor Jason Schneider, President, University Senate
Professor Ani Satz, Incoming President, University Senate
Professor Aryeh Stein, Chair, Faculty Hearing Committee
Professor Thomas Rogers, President, Emory University AAUP Chapter
Professor Robert M. Scott, President, Georgia AAUP Conference
Professor Paul J. Zwier