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March 17, 2016

Via Electronic Mail and Courier

Dr. Hans-Joerg Tiede
Associate Secretary
Department of Academic Freedom, Tenure, and Governance
American Association of University Professors
1133 19th Street NW
Suite 200
Washington, DC 20036

Dear Dr. Tiede:

This is in further response to your letter dated March 7, 2016 to Chair Henrickson and Interim Chancellor Foley. The Board of Curators has been clear about its action regarding Dr. Click's employment. It already has explained its decision to terminate her appointment and the steps it took to reach that decision. Considering the nature of the issues and the extent of information already available, it appears that your organization will be investigating a matter in which the essential events are not in doubt or dispute. Accordingly, we do not believe meetings with your organization's investigative committee are necessary.

While a meeting with an investigative committee seems unnecessary, there appears to be significant disagreement as to how the Board's action in this matter should be characterized. To address that point, we provide this letter to address issues presented in your correspondence.

Your correspondence has complained that Dr. Click did not receive "an adjudicative hearing before an elected faculty body." It has asserted that the Board's dismissal of Dr. Click without such faculty hearing is "fundamentally at odds with basic standards of academic due process as set forth in the joint 1940 *Statement of Principles on Academic Freedom and Tenure* and the 1958 *Statement on Procedural Standards in Faculty Dismissal Proceedings*."

We disagree. On the contrary, the Board's action in this matter was fundamentally consistent with the key principles of the 1940 *Statement* and 1958 *Statement*. Those *Statements* do not establish an absolute right or requirement for a faculty hearing. Rather, their core principles – and your organization's standard for censure – concern protection of academic freedom and tenure. This was not a case about Dr. Click's academic freedom and the Board's action does not undermine the principle of tenure (which Dr. Click did not have). While the Board endorses the normative practice of faculty hearings in cases of mid-term dismissal, the Board found it necessary to act on its own in this singular instance when existing University procedures failed to address the seriousness of Dr. Click's conduct. The Board acted on essential facts that were not in dispute and applied University standards that are consistent with those of your organization's expectations for a faculty member. It addressed conduct by Dr. Click that was contrary to those basic expectations and at odds with principles of free expression that animate the 1940 *Statement*. Indeed, by calling for physical intimidation or violence against a student Dr. Click engaged in conduct that, if tolerated, would pose a risk to the safety of students and faculty and fundamentally endanger the University's academic environment. Ultimately, the decision of terminating a faculty member's employment rests with a governing board, as the 1958 *Statement* recognizes. In this instance, it was incumbent on the Board to establish that Dr. Click's conduct is not compatible with shared principles and expectations of faculty members. In reaching that decision in Dr. Click's case, the Board provided her with fairness and due process.

The Board's action did not threaten academic freedom or tenure and does not warrant censure. Rather, it serves as an occasion to review existing practice and processes in an effort to ensure that any future instance of faculty misconduct will be addressed with faculty review and without the need for the Board to act on its own. The Board intends to engage in such a review in collaboration with faculty.

We address these points in more detail below.

Undisputed Facts

The Board already has made available the investigative report (with exhibits) regarding Dr. Click's conduct, Dr. Click's response to the report, and the Board's letter explaining its decision. Links to those documents, along with a statement from University leadership and a timeline of events, can be found at [this site](#). Subsequently, the Board also has made available Dr. Click's request for reconsideration and the Board's decision denying that request. Those documents are available at [this site](#). For your convenience, we will send hard copies of these and the other University documents referenced in this letter for you and the members of your organization's committee.

The essential facts of Dr. Click's conduct do not appear to be in question. Dr. Click has not disputed the facts that:

- On October 10, 2015, she and others blocked the homecoming parade by demonstrating in the street, impeding and interfering with the traffic flow of the parade on a public street.
- On October 10, 2015, she attempted to physically block Columbia police officers while they were attempting to carry out their duties by clearing the street so the homecoming parade could proceed.

- On November 9, 2015, she attempted to exclude University students Tim Tai, Mark Schierbecker and perhaps others from a public space of Carnahan Quadrangle, yelling at them that they needed to go or get out and encouraging others, including University students, to exclude them.
- On November 9, 2015, she attempted to prohibit Mr. Tai and other members of the media from covering a news event on a public space of Carnahan Quadrangle and encouraged others, including University students, to interfere with media attempts to cover the story.
- On November 9, 2015, she came into physical contact with a University student, Mr. Shierbecker, when she reached toward him and physically knocked ajar the camera he was holding in his hands.
- On November 9, 2015, she encouraged others to physically intimidate Mr. Schierbecker and exclude him from a public space on Carnahan Quadrangle when she yelled “Hey who wants to help me get this reporter out of here?” and while pointing at Mr. Schierbecker said, “I need some muscle over here, help me get him out, who’s gonna help me?”
- On November 9, 2015, when Mr. Schierbecker stated he had a right to be in a public place owned by the University, she invoked her faculty status by saying to him, “I know. That’s a really good one, and I’m a Communication faculty and I really get that argument, but you need to go, you need to go.”
- On November 9, 2015, she encouraged students to continue to exclude Mr. Sheierbecker from a public place on Carnahan Quadrangle, saying “You guys need to make room for this guy to come through, he shouldn’t be here. And don’t let him back in.”
- On December 18, 2015, she received a letter of admonishment from the MU Provost limited to her conduct on November 9, 2015. During her interview in the investigation, she disagreed with the letter’s statement that her behavior was “completely unacceptable for a Mizzou faculty member;” she disagreed with the letter’s statement that she “failed to exercise appropriate restraint;” she disagreed with the letter’s statement that she “failed to show respect for the opinion of others;” and she disagreed with the letter’s characterization of her mistake as a “serious” one.

The list above is just a summary of some of the established essential facts. The investigation identified and confirmed many other facts that are not in dispute and those are included in the investigative report and exhibits. In reaching its decision, the Board reviewed and relied upon the full report and exhibits as well as Dr. Click’s submissions, adopting her characterizations of facts on any items of disagreement.

University and AAUP Standards Applied

The standards applied by the Board in considering Dr. Click’s conduct are not in dispute, but instead were articulated by the Board in its letter of February 25, 2016. These included the following standards identified in the Collected Rules and Regulations of the University of Missouri (CRR):

- “The University of Missouri will at all times defend the right of free expression of opinion, including the right of peaceful assembly. The University will, indeed, guard this right in behalf of all persons

associated with the institution and will not tolerate actions by any individual or group that would seek to restrict the appropriate freedoms of any other individual or group.” [CRR Section 330.030.A](#) (emphasis added);

- “College or university faculty members are citizens, members of an educational institution, and members of learned professions. When they speak or write as citizens, they are to be free from institutional censorship or discipline, but their special position in the community imposes special obligations. They should anticipate that the public may judge their profession and their institution by their utterances and actions. Hence, they should at all times be accurate, exercise appropriate restraint, show respect for the opinions of others, and make every effort to indicate that they do not speak for the institution.” [CRR Section 310.010.A.2.c.](#) (emphasis added);
- “As a teacher, the professor encourages the free pursuit of learning in his/her students. He/she holds before them the best scholarly standards of his/her discipline. He/she demonstrates respect for the student as an individual, and adheres to his/her proper role as intellectual guide and counselor.... He/she protects their academic freedom.” [CRR Section 300.010.C.2.a.](#) (emphasis added);
- “As a member of his/her institution, the professor seeks above all to be an effective teacher and scholar.... He/she determines the amount and character of the work he/she does outside his/her institution with due regard to his/her paramount responsibilities within it....” [CRR Section 300.010.C.2.c.](#) (emphasis added); and
- “The personal conduct at all times of any employees of the University shall be of such a nature as not to bring discredit upon the institution. Conduct contrary to this policy will result in the termination of such employees’ connection with the University.” [CRR Section 330.010.A](#) (emphasis added).

As discussed further below, these standards are consistent with those established by your organization and in several instances are virtually identical to provisions of the [1940 Statement of Principles on Academic Freedom and Tenure](#) and your organization’s [Statement on Professional Ethics](#). It is not practically possible for any set of written principles or standards to capture all reasonable expectations of faculty members or specifically identify all conduct that be worthy of discipline, such as assault or physical intimidation of a student. The Board also considered whether Dr. Click’s conduct otherwise was wrongful or inconsistent with the expectations of a University faculty member, expectations which square with those articulated by your organization. Consistent with its governing authority and responsibility, the Board also considered the extent to which the incident called into question the University’s tolerance for and response to Dr. Click’s conduct and, accordingly, whether it was in the best interest of the University to impose discipline.

It also is apparent that the Board did not place a burden of proof on Dr. Click. Instead, the Board examined the evidence to determine whether it showed that Dr. Click’s conduct was improper and that discipline was warranted. The Board’s February 25 letter discussed the evidence and explained how it demonstrated misconduct by Dr. Click and need for discipline.

Due Process Provided

The steps taken by the Board in reaching its decision are well known and consistent with fairness and due process. On January 25, 2016, Dr. Click was charged with assault by the local prosecutor. By action of January 27, 2016, which was communicated to Dr. Click orally that day and by letter dated January 29, 2016, the Board directed that an investigation be conducted to address Dr. Click's conduct in connection with last semester's protests. Outside counsel was engaged to conduct an objective fact investigation. The investigation involved review of relevant documents, materials, and video recordings, and interviews of more than 20 witnesses. Dr. Click was interviewed twice and she was represented by counsel on both occasions. Dr. Click identified witnesses she thought should be interviewed. Outside counsel interviewed or attempted to interview each of those witnesses and included their information in the report of the investigation. The report contained full summaries of the interviews as exhibits to the report so Dr. Click would know the identity of the witnesses and their statements and have an opportunity to rebut any evidence. On February 12, 2016, Dr. Click was provided with a copy of the report of the investigation and she received revisions to the report on February 15, 2016. She was offered an opportunity to submit a written response concerning the report or comment on whether she believed additional discipline was appropriate. Dr. Click provided such a response. The Board did not receive the report until February 19, 2016, at which time it also received the response submitted by Dr. Click.

The Board reviewed the report and Dr. Click's response. It issued a conditional determination in its February 25 letter that Dr. Click's employment with the University should be terminated, subject to an opportunity for her to submit additional explanation and seek reconsideration by the Board. The February 25 letter discussed the process followed, the conduct and standards considered by the Board, and how the evidence led the Board to its conditional determination. The February 25 letter also informed Dr. Click that she could submit additional explanation, which she did by letter to the Board dated March 4, 2016. The Board considered the additional information provided by Dr. Click and reviewed again whether the evidence supported a finding of misconduct and termination. The Board concluded that its reasoning and determination stated in the February 25 letter remained unchanged. Accordingly, the Board issued a letter dated March 15, 2016 to Dr. Click informing her that her employment was terminated effective immediately.

Focus on Core Principles of the Statements and Faculty Standards

Your correspondence has insisted almost exclusively on a faculty hearing regarding Dr. Click, citing the 1940 *Statement*, the 1958 *Statement*, and normative practices. We respectfully submit that the focus should not be so narrow, but instead should address whether the Board's actions are consistent with core principles of the *Statements*.

Neither the 1940 *Statement* nor the 1958 *Statement* establishes an absolute requirement for a hearing before a faculty body as the only means for mid-term dismissal of a probationary faculty member like Dr. Click. The 1940 statement provides that "dismissal for cause of a teacher previous to the expiration of a term appointment, should, if possible, be considered by both a faculty committee and the governing board of the institution" (emphasis added). The 1958 statement in turn states that its "recommended" procedural standards "are not intended to establish a norm in the same manner as the 1940 *Statement of Principles on Academic Freedom and Tenure*, but are presented rather as a guide to be used according to the nature and

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traditions of particular institutions in giving effect to both faculty tenure rights and the obligations of faculty members in the academic community” (emphasis added).

The University maintains procedures that essentially track the provisions of the 1940 and 1958 statements and entail a hearing before a faculty committee in cases of dismissal of a faculty member for cause. Those are found in [CRR Section 310.060](#). However, those procedures are not the only means for the Board to act on termination of an appointment. Consistent with its constitutional and statutory governing authority, the Board expressly has retained authority to act in such matters. See CRR Sections [10.030.A.9](#), [20.030.B](#), and [320.020.B](#). (In this regard, we disagree with the assertion in your correspondence that the Board’s action did not conform to the University’s rules.)

The 1940 *Statement* and 1958 *Statement* do not prohibit the Board’s retention of authority to act on termination of appointments. By their terms, which are noted above, they stop short of any inflexible mandate for a hearing before a faculty body in all cases and thus leave open the prospect of action by a governing board on its own.

In addition to addressing the 1940 *Statement* and the 1958 *Statement*, your correspondence has referred to the “normative practice” of conducting an adjudicative hearing of record before an elected faculty body in cases of faculty dismissal. We are well aware of this normative practice. But a normative practice is not an absolute requirement, as reflected by the 1940 *Statement’s* provision that mid-term dismissal of a faculty member “should, if possible, be considered by both a faculty committee and the governing board of the institution.”

The Board supports the normative practice and has no contrary pattern of acting on its own in such matters – indeed, it has not done so in any other case within active memory. As we have explained, this case was uniquely challenging. Dr. Click’s conduct had been well known for many weeks and was sufficiently egregious that it led to a criminal charge for assault against a student. Nonetheless, the process which would have involved a hearing before a faculty body had failed to address Dr. Click’s conduct. This raised such serious questions about the University’s tolerance of that conduct that it was incumbent on the Board to address the matter and, after review and consideration, to uphold the University’s standards for faculty conduct. (As discussed below, the Board’s action also upheld key principles of the 1940 *Statement*.) The Board is aware of the process available for persons associated with the University, including Board members, to initiate a charge of faculty irresponsibility. [CRR Section 300.010.L](#). But – consistent with normative practices – the Board has not previously involved itself in individual faculty personnel matters. It was only after there had been a failure of any other process to address the seriousness of Dr. Click’s conduct that the matter rose to a level where the University’s commitment to its educational standards was in serious question and the Board felt compelled to act on its own. At that point, engaging any other process would have allowed those questions to linger for such a time that in the Board’s view the effects on the University’s educational environment would have been caustic. As we have noted, the Board does not seek or intend to set a precedent or change norms through its action in this case. On the contrary, we intend to take efforts in collaboration with faculty to ensure that any future instance of faculty misconduct is addressed through process involving faculty review, and without need for the Board to act in this manner again.

In view of the terms of the 1940 *Statement* and the 1958 *Statement* and the singular nature of the Board's action, it is not enough simply to observe that there was no faculty hearing. That by itself does not mean the Board's action concerning Dr. Click was at odds with the 1940 *Statement* or 1958 *Statement*. Nor does the Board's action in this matter indicate disregard for those *Statements* or "normative practices." Instead, the Board's action should be considered with regard to the terms of the *Statements* as a whole to determine whether it is in substantial compliance with the fundamental principles of those *Statements*. Looking not just at the absence of a faculty hearing but at the core principles of the *Statements* is consistent with your organization's statements about the grounds for censure, which comes from "[findings that conditions for academic freedom and tenure are unsatisfactory at a college or university](#)." Considered in that context, the Board's actions square appropriately with the fundamental principles of the *Statements* and do not warrant censure.

The Board's Action Was Consistent with Core Principles of the Statements and Faculty Standards

The 1940 *Statement* starts from the proposition that "[i]nstitutions of higher education are conducted for the common good," which "depends on the free search for truth and its free exposition." It further states that "[a]cademic freedom is essential to these purposes...." Neither the 1940 *Statement* nor the 1958 *Statement* discussed particular dismissal procedures as absolute rights or ends in themselves. Rather, they are addressed as mechanisms to protect the fundamental principles of common good and academic freedom. Even tenure itself – which Dr. Click did not have – "is a means to certain ends; specifically: (1) freedom of teaching and research and of extramural activities, and (2) a sufficient degree of economic security to make the profession attractive to men and women of ability."

This is not a case about Dr. Click's academic freedom. The Board's action does not concern the content of Dr. Click's teaching or research. For that matter, its action does not concern any of Dr. Click's views, positions, or choices to associate herself with any particular students or groups. The Board made this expressly clear in its February 25 and March 15 letters explaining its decision. As stated there, the Board acted based on concerns about the particular instances of Dr. Click's conduct that are addressed in those letters. We are aware of Dr. Click's public assertion that she has been scapegoated. That does not hold water. Many other faculty members associated with students who were protesting in the Fall 2015 semester and expressed support for their views. No action has been taken against any of those faculty members. Instead, the Board has taken action only against Dr. Click because it was her conduct that was improper for reasons explained in the Board's February 25 letter, conduct that was at odds with your organization's principles. That conduct included, for example, Dr. Click's physical interference with a University student in an effort to force him to remove from a public space where he was appropriately present in the exercise of his own rights; a dangerous call for physical intimidation or violence toward that student in a further effort to make him leave the public space; and invoking her faculty status in her confrontation with the student. Thus, far from addressing any exercise of academic freedom by Dr. Click, the Board's action addressed her interference with others who were exercising their rights, including freedoms of assembly, press, and speech.

In that regard, the Board has acted to protect principles that are reflected in the 1940 *Statement*. For example, the 1940 *Statement* emphasizes, "The common good depends upon the free search for truth and its free exposition." It recognizes that academic freedom "carries with it duties correlative with rights" and that

faculty members' "special position in the community imposes special obligations." Thus the 1940 *Statement* provides that faculty members "should remember that the public may judge their profession and their institution by their utterances. Hence they should at all times be accurate, should exercise appropriate restraint, should show respect for the opinions of others, and should make every effort to indicate that they are not speaking for the institution." These standards are consistent with the University's rules as well, which were expressly noted in the Board's February 25 letter. For example, the University's CRR Section 330.030.A emphasizes the importance of free expression, stating, "The University of Missouri will at all times defend the right of free expression of opinion, including the right of peaceful assembly. The University will, indeed, guard this right in behalf of all persons associated with the institution and will not tolerate actions by any individual or group that would seek to restrict the appropriate freedoms of any other individual or group." The University's CRR Section 310.010.A.2.c. even more closely echoes the terms the 1940 *Statement*, providing that faculty members' "special position in the community imposes special obligations. They should anticipate that the public may judge their profession and their institution by their utterances and actions. Hence, they should at all times be accurate, exercise appropriate restraint, show respect for the opinions of others, and make every effort to indicate that they do not speak for the institution."

Dr. Click's conduct was contrary to these principles of the 1940 *Statement* and the University's rules. For example, she chose to interfere with others who were exercising their rights in a public place, including freedoms of assembly, press, and speech. She even went so far as to physically interfere with a University student who was exercising his rights and call for physical intimidation or violence to make him comply with her demands that he leave a public place. Her action was especially disturbing to the Board because it risked instigating violence in the events taking place and harm to students. To invoke intimidation or violence against a student plainly violates the standards and principles that both the University and your organization set for faculty members. We recognize Dr. Click's characterization of the environment as challenging, but that did not justify her actions. Rather, it was all the more important for her to exercise appropriate judgment and restraint. Tolerating such dangerous conduct and interference with rights of others would endanger the University's academic environment, signaling to current and prospective students, parents, faculty, and the public that the University is a place where faculty can take it upon themselves to encourage intimidation and violence when they perceive a tense or challenging moment. As the University's governing authority, the Board has ultimate responsibility to protect the University's educational environment and clearly establish that such conduct will not be tolerated, especially when no other process had addressed that critical point. The Board's February 25 letter addresses Dr. Click's actions in more detail, but in sum, the undisputed and well-documented facts of her conduct show that she acted contrary to the "correlative" "duties" and "special obligations" that come with a position on the University's faculty. The Board's decision that such conduct will not be tolerated is consistent with the core principles of the 1940 statement. The Board's action protected the common good and free search for truth. It upheld the "duties" and "special obligations" of faculty members.

Even viewed in relation to the "certain ends" served by tenure – which again, Dr. Click did not have – the Board's action was consistent with the principles of the 1940 *Statement*. As discussed above, the Board's action had nothing to do with Dr. Click's "freedom of teaching and research and of extramural activities." Nor does the Board's action threaten a "sufficient degree of economic security to make the profession

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attractive to men and women of ability.” As we have explained, this was a singular action to address Dr. Click’s particular improper conduct. It does not impose any broader impact on the economic security of the academic profession.

Further, the Board reached its decision in a fundamentally fair manner. In our previous correspondence, we have explained that Dr. Click received extensive opportunities to address the concerns about her conduct. This included interviews of her in which she was represented by counsel and interviews of witnesses she thought were relevant. It also included receiving the full investigative report, exhibits, and statements of witnesses and a chance to respond to it, after which the report and her response were provided simultaneously to the Board. Dr. Click further was given a detailed explanation of the Board’s action and an opportunity to seek reconsideration. She was invited to submit any issues, discussion, evidence, or materials. This could have included any further statements from witnesses if she felt those would have been helpful, but Dr. Click did not submit any such material. In summary, Dr. Click was informed in detail of the charges of misconduct and the evidence about them and she has been given multiple open opportunities to provide information and explanation. After all this, the fundamental facts of her conduct were not in meaningful dispute and the Board accepted her version of the facts for purposes of its decision.

The Board’s Action Does Not Warrant Censure

In sum, your correspondence has insisted that Dr. Click receive a hearing before a faculty body. The terms of the 1940 *Statement* and the 1958 *Statement* do not articulate any absolute right or requirement for such a hearing. While the Board supports the normative practice of faculty hearings in cases of mid-term faculty dismissal, it retains its governing authority to act on its own. This is not prohibited by the *Statements*. And when viewed in broader context, the Board’s action is not at odds with the fundamental principles of the *Statements*, but rather upholds them in important respects. The Board has no aim to repeat this process and instead intends to make efforts to prevent the need for it to act on its own in the future.

Even if your organization disagrees in the end on the specific issue of whether Dr. Click should have received a hearing before a faculty body, the overall context of the Board’s action and the fundamental principles of the 1940 *Statement* call for exercise of discretion in guiding your organization’s reaction to this case. While we respectfully submit that the Board’s action did not violate acceptable standards, we note that the Committee A procedures provide, “Committee A must exercise discretionary judgment throughout the various stages in the life of a case. Discretion is involved in revising and agreeing to a report. Discretion is involved in deciding whether to recommend censure. There have been many cases where there were clear violations of acceptable standards, and where censure was not recommended.” The Board’s singular action in this case warrants reflection and attention to future policy and practice. But it does not suggest that “conditions for academic freedom and tenure are unsatisfactory” at the University and thus does not warrant censure.

Because we believe the extent of available information and absence of dispute about essential events make an investigation unnecessary, the Board respectfully declines your invitation to meet with your organization’s investigative committee on March 22 or 23, 2016. Please instead accept this letter as our statement regarding the matters addressed in your correspondence. If your organization’s committee nonetheless chooses to visit campus on March 22-23, the University would be glad to provide meeting space

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and any other reasonable logistical assistance. The committee may contact the Chancellor's office for assistance.

Sincerely,



Pamela Q. Henrickson, Chair
Board of Curators

Enclosures:

Report to the University of Missouri Board of Curators, with Exhibits, February 19, 2016
Melissa Click Addendum to the Investigative Report, February 19, 2016
February 25, 2016 letter from Board of Curators to Dr. Melissa Click
March 4, 2016 letter from Dr. Melissa Click to Board of Curators
March 15, 2016 letter from Board of Curators to Dr. Melissa Click
Section 330.030, Collected Rules and Regulations of the University of Missouri
Section 310.010, Collected Rules and Regulations of the University of Missouri
Section 300.010, Collected Rules and Regulations of the University of Missouri
Section 330.010, Collected Rules and Regulations of the University of Missouri
Section 310.060, Collected Rules and Regulations of the University of Missouri
Section 10.030, Collected Rules and Regulations of the University of Missouri
Section 20.030, Collected Rules and Regulations of the University of Missouri
Section 320.020, Collected Rules and Regulations of the University of Missouri

cc (without enclosures):

Board of Curators
Interim President Middleton
Interim Chancellor Foley
Professor Ben Trachtenberg, Chair, University of Missouri Faculty Council
Professor Galen Suppes, President, University of Missouri AAUP Chapter
Professor David Robinson, Chair, Committee A on Academic Freedom and Tenure, Missouri AAUP
Conference
Professor Gregory Comer, President, Missouri AAUP Conference
Professor Melissa Click