

**Assessment of Threats to University of Kansas School Accreditation
by
January 2021 Kansas Board of Regents (KBOR) Tenured Faculty Dismissal Policy
and
Subsequent Consideration for Adoption by KU Chancellor and Provost
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Executive Summary:

This document is the considered opinion of the State of Kansas Conference of the AAUP related to anticipated accreditation challenges induced by the January 2021 KBOR policy allowing capricious dismissal of tenured faculty. Accreditation challenges at KU's schools of Architecture, Business, Engineering, Journalism, Law, Music, Urban Planning, Medicine, and Nursing were assessed. Because the Provost and Chancellor have exempted the schools of Nursing and Medicine from this policy, they are currently unlikely to face immediate adverse outcomes (e.g, noted areas of concern, probation, loss) related to their specialized accreditation; however, if this were not the case, then the reaccreditation of the School of Nursing (2022) could be called into question and the School of Medicine (2021 - 2022) would most certainly be called into question given comparatively strong language protecting academic freedom and tenure in their accreditation standards. While the School of Engineering is determined to be least threatened on the Lawrence campus by this policy change, it could still trigger an interim review. The schools of Architecture, Business, Journalism, Music and Urban Planning are under greater threat of accreditation review with possible revocation of accreditation as their accreditation standards typically mention tenure and its function in higher education. The accreditation standards published by the American Bar Association include the AAUP 1940 Statement of Principles on Academic Freedom and Tenure. Because of this, it is highly likely that the accreditation of the School of Law would be almost immediately under review following policy adoption with a nontrivial chance of revocation thereafter. This in turn would very adversely affect the 311 students currently enrolled and the 80 faculty members of the school.

Assessment

On January 20, 2021, the Kansas Board of Regents (KBOR) issued a new policy abrogating tenure and other guarantees of continuing employment for faculty and staff at the state supported institutions of higher education. The policy will remain in force through December 31, 2022. Under this policy, the “CEO”—the highest official—of a state university is empowered to fire any faculty or staff person, even those who have tenure, on 30 days’ notice. The employees thus affected may appeal on procedural grounds but must prove that the dismissal was not carried out in accordance with the policy, without any rights of discovery. The

universities do not need to declare financial exigency to make use of this policy, or to follow the processes a declaration of financial exigency would require. In effect, all employees' contracts have been converted to "at will" employment; they may be dismissed at the sole discretion of the "CEO," regardless of prior contractual provisions and regardless of the quality of their performance of their duties.

KBOR issued this policy without warning and without any public discussion. To the best of our knowledge, they consulted with nobody among the faculty and staff affected by this policy. It is unclear whether they consulted with university administrators. It is also unclear whether the impetus for this policy originated with KBOR or with university administrators, who are facing financial difficulties due to the ongoing covid pandemic, budget reductions from the state, and (particularly in the case of the University of Kansas) years of overcommitment of anticipated future income that did not materialize. However, the heads of all the state universities, except the University of Kansas, announced immediately that they have no plans to avail themselves of this new policy. The chancellor and provost of the University of Kansas, in contrast, have indicated that they countenance its use, despite the strongly-stated opposition of the faculty, staff, and students.

Any abrogation of tenure is extremely problematical under the terms of the 1940 AAUP statement on academic freedom and tenure, which is explicitly written into KBOR statutes and University of Kansas rules. AAUP guidelines permit the dismissal of tenured faculty only for just cause and through the established procedures. Even in cases of financial exigency, faculty must be integrated into the decision-making. The KBOR policy makes no such requirement, investing authority solely in the "CEO."

This report is focused more narrowly on how the accreditation of academic programs at the University of Kansas (and by extension, at other state universities under the authority of KBOR) would be affected by the new KBOR policy. While the university as a whole undergoes accreditation, the focus here is on the accreditation of specific professional programs. The programs are:

Architecture
Business
Engineering
Journalism
Law
Music
Urban Planning
Medicine
Nursing

Accreditation aims to ascertain that students who undertake and complete the program have the qualifications they need to function as professionals. For that reason, the accreditation boards are concerned with the quality of the faculty, but not directly with the terms of their employment. Consequently, in many—but not all—cases, the criteria for accreditation/reaccreditation do not speak directly to the issue of abrogation of tenure. However, the frequent references to ascertaining the quality of the faculty testify the expectation that university-based programs will not be staffed by an unstable workforce of contingent instructors with the lowest permissible level of qualification. Similarly, the criteria for accreditation/reaccreditation are concerned with the sufficiency of resources, but not directly with the program's budget. The firing of faculty, especially tenured and tenure-track faculty, for

reasons of budgetary constraints would necessarily be a red flag to accreditation boards, even if the programs in question did not suffer the loss of faculty. A few accreditation documents specifically reference the health of other units at the university among the criteria for certification.

Most accreditation guidelines state that serious changes in the configuration of the program in between scheduled reviews will result in an interim review that can result in the loss of accreditation. In other words, the KU administration cannot temporarily abrogate tenure, dismiss faculty, and slash budgets with the idea that they can restore them before the next scheduled review and thus avoid consequences. Any implementation of the new KBOR policy in currently accredited programs could—and in some cases, certainly would—result in loss of accreditation.

Architecture¹

The criteria do not specifically discuss tenure. However, they do specify that programs must have “appropriate and adequately funded human resources to support student learning and achievement... who have opportunities to pursue professional development that contributes to program improvement.” (p. 7). It is hard to see how suspension of tenure is compatible with this requirement.

In terms of budget, the criteria require “the appropriate institutional support and financial resources to support student learning and achievement during the next term of accreditation.” (p. 8). Concern is not only for the Architecture program itself, but also for “[t]he program’s role in and relationship to its academic context and university community, including how the program benefits—and benefits from—its institutional setting and how the program as a unit and/or its individual faculty members participate in university-wide initiatives and the university’s academic plan. Also describe how the program, as a unit, develops multidisciplinary relationships and leverages unique opportunities in the institution and the community.” (p. 1). In this way, the elimination or gutting of other academic programs that intersect with Architecture, such as those in art, art history, history, international studies, urban planning, and engineering, would jeopardize the accreditation of the Architecture program.

Business²

The criteria mention tenure only fleetingly, as one category of faculty. However, the criteria repeatedly emphasize that “faculty’s intellectual capital brings currency, rigor, and relevance to a business school’s programs and supports its mission, strategies, and expected outcomes... [T]he school must ensure that faculty and professional staff members are sufficient to support research outcomes and other mission-related activities... Where there are problems, evidence of corrective action is essential.” (p. 19). In this context, the loss of faculty, either through dismissal or departure to greener pastures, would trigger considerable concern. Accreditation requires that “[t]he school has well-documented and well-communicated processes to manage, develop, and support faculty and professional staff over the progression

¹ National Architecture Accrediting Board: Conditions for Accreditation, February 2020.

² AACSB: 2020 Guiding Principles and Standards for Business Accreditation.

of their careers that are consistent with the school's mission, strategies, and expected outcomes." (p. 27). During the accreditation process, the institution must "Describe processes for determining performance expectations for faculty. Describe processes for orientation, guidance, and mentoring of faculty and professional staff. Describe evaluation, promotion, and reward processes, as well as ways that faculty are engaged in these processes." (p. 37). Further, the Business program is judged on "collegiality": "The school maintains a collegiate environment. Mutual respect, collaboration, and trust are pursued to enable the business school to promote a positive culture that is supportive of the school's strategic mission and goals, faculty development, learner success, and thought leadership." (p. 16). Given these provisions, the elimination of tenure would certainly become an issue in reaccreditation. In particular, the sudden abrogation of tenure violates the provision that faculty members have consistent support and evaluation processes, and it undermines trust.

Perhaps predictably, the Business accreditation criteria pay particular attention to financial health of the program: "The school has a financial plan for management of faculty and professional staff resources, including recruiting, retaining, and developing appropriately qualified faculty and professional staff." (p. 25). In addition, the materials submitted must include a contingency plan for reduction of resources: "a risk assessment specific to the school's financial resources and describe the contingency planning process the school will use if a significant reduction in resources occurs." (pp. 25-26). In other words, the Business program could be deemed inadequate if it is affected by budgetary retrenchment, whether or not it occurs under the official label of "financial exigency."

Among other criteria for accreditation, Business programs are judged on their "global mindset." They must demonstrate that "[t]he curriculum imbues the understanding of other cultures and values, and learners are educated on the global nature of business and the importance of understanding global trends. The school fosters sensitivity toward a greater understanding and acceptance of cultural differences and global perspectives." (p. 8). The elimination of international studies programs and foreign languages, then, would negatively impact the accreditation of the Business program.

Engineering³

Accreditation of Engineering programs includes "faculty" among the criteria evaluated, but does not specify expectations as to the faculty members' qualifications. There is no reference to tenure. Changes to the faculty may trigger a review of existing accreditation, as would changes in institutional support.

Journalism⁴

Journalism accreditation specifically assigns to "full-time" faculty "primary responsibility for teaching, research/creative activity and service." The "unit"—that is, the School of Journalism at KU—must be in charge of establishing "require[ments], support[] and rewards [for]"

³ ABET: ABET Accreditation Policy and Procedure Manual (2021-2022).

⁴ Accrediting Council on Education in Journalism and Mass Communication: ACEJMC Accrediting Standards (2013).

faculty research, creative activity and/or professional activity;... expectations for research, creative activity and/or professional activity in criteria for hiring, promotion and tenure; and [e]valuation criteria for promotion, tenure and merit recognition account for and acknowledge activities appropriate to faculty members' professional as well as scholarly specializations." This requirement would preclude the university administration deciding to eliminate tenure, or to determine criteria for retention or dismissal apart from the School.

Law⁵

The accreditation criteria for law specifically affirm tenure. They incorporate the 1940 AAUP Statement on Academic Freedom and Tenure into the accreditation guidelines as Appendix 1. The standard for Law School governance specifies, "The dean and the faculty shall recommend the selection, retention, promotion, and tenure (or granting of security of position) of members of the faculty." (p. 9). Under the standard for faculty, the guidelines reiterate, "A law school shall have a comprehensive system for evaluating candidates for promotion and tenure or other forms of security of position, including written criteria and procedures that are made available to the faculty." (p. 28). These criteria emphasize the importance of tenure and that the faculty and dean of the Law School, rather than the university's upper administration, oversees it. The accreditation document further requires that a substantial portion of the teaching be done by full-time faculty (p. 26), and that "A law school shall have a comprehensive system for evaluating candidates for promotion and tenure or other forms of security of position, including written criteria and procedures that are made available to the faculty." (p. 27). Taken together, these standards create a strong defense of faculty tenure, indicating that the abrogation of tenure would necessarily lead to the loss of accreditation.

The Law accreditation criteria also stress the fiscal autonomy of the Law program. The guidelines include these admonitions:

... A law school that is part of a university shall obtain at least annually from its university an accounting and explanation for all charges and costs assessed against resources generated by the law school and for any use of resources generated by the law school to support non-law school activities and central university services.

...A law school is not in compliance with the Standards if its current financial condition has a negative and material effect on the school's ability to operate in compliance with the Standards or to carry out its program of legal education.

...A law school is not in compliance with the Standards if its anticipated financial condition is reasonably expected to have a negative and material effect on the school's ability to operate in compliance with the Standards or to carry out its program of legal education. (p. 10).

These provisions clarify that any financial situation that impacts the operation of the Law School and any attempt to reduce Law School resources in order to bolster other programs will jeopardize accreditation. In addition, the provisions empower the Law School to demand a detailed accounting how funds dedicated to the Law School are being spent.

⁵ American Bar Association: ABA Standards and Rules of Procedure for Approval of Law Schools 2019-2020.

Overall, unless the KU administration exempts the Law School from the new KBOR policy and maintains its budget, despite current circumstances, the Law School is likely to lose accreditation.

Medicine⁶

The criteria for accreditation of programs in Medicine require that they have “...clear policies and procedures in place for faculty appointment, renewal of appointment, promotion, granting of tenure, remediation, and dismissal that involve the faculty... and provide[] each faculty member with written information about term of appointment, responsibilities, lines of communication, privileges and benefits, performance evaluation and remediation, terms of dismissal, and, if relevant, the policy on practice earnings... [Also that,] medical school faculty member receive [] regularly scheduled and timely feedback from departmental and/or other programmatic or institutional leaders on academic performance and progress toward promotion and, when applicable, tenure. (p. 5). Together, these provisions uphold the institution of tenure, and prohibit university administrators from unilaterally changing the terms of tenure.

As in the case of other accreditation programs, the sufficiency of the budgetary resources must be demonstrated. (p. 6).

Music⁷

The standards for Music programs require that “The institution must have clear, published definitions of any faculty classifications in use (for example, tenured, graduate assistant, full-time, part-time, adjunct, and visiting),” with “...procedures for appointing, evaluating, and advancing music faculty that promote objectivity.” Faculty evaluations must be based on “clear and accurate statements regarding responsibilities and expectations made at the time of employment and thereafter.” (pp. 63-65). These provisions would render any abrogation of tenure for faculty already employed at KU before the issuing of the new KBOR policy in violation of the Music accreditation standards.

Music accreditation standards also emphasize the importance of financial stability: “The audited financial statements of the institution shall reveal sound financial management in support of the educational program... Evidence of past and potential financial stability and long-range fiscal and financial planning must be demonstrated.” (pp. 61-62). Thus, the fiscal crisis at KU, whether or not it is officially declared to be “financial exigency,” would undermine the Music program’s accreditation.

Nursing⁸

The accreditation criteria for Nursing programs making fleeting references to tenure as part of having a qualified and sufficiently numerous faculty, but without prioritizing tenured

⁶ Liaison Committee on Medical Education: Standards for Accreditation of Medical Education Programs Leading to the MD Degree, March 2020.

⁷ National Association of Schools of Music: Handbook 2020-21.

⁸ Commission on Collegiate Nursing Education: Standards for Accreditation of Baccalaureate and Graduate Nursing Programs (2018).

faculty over other categories. However, the guidelines require that “The nursing unit’s expectations for faculty are written and communicated to the faculty and are congruent with institutional expectations,” and that they are “fair and equitable; published and accessible.” (p. 7). The university is required to certify that “[i]nstitutional support is available to promote faculty outcomes congruent with defined expectations of the faculty role (full-time, part-time, adjunct, tenured, non-tenured, or other).” (p. 12). Taken together, these provisions would place accreditation at risk if the university suddenly abrogates tenure, because such action would not be fair or previously published.

Urban Planning⁹

The accreditation standards for Urban Planning programs specify the ratio of faculty to students, although without requiring a certain percentage of the faculty to be tenured or tenure-track. In regard to tenure, the guidelines specify, “[t]he Program shall publish policies and procedures for making decisions about the promotion and tenure of faculty, and shall provide junior faculty with the support that they need to advance professionally within the Program.” (p. 13) This provision implicitly upholds tenure, putting an institution that abrogated existing published policies in violation.

⁹ PAB Accreditation Standards and Criteria (2018).