John Carroll University
Board of Directors

Faculty Handbook – Proposed Amendments

Financial Exigency: It is proposed by the Board of Directors that the Faculty Handbook: i) Part Four: Personnel Policies, Section V. Termination of Contract, ii) Part Four: Personnel Policies, Subsection V.F Termination of Contract because of Financial Exigency to add Budgetary Hardship section, and iii) for clean-up purposes, Part Three: Rights and Responsibilities of the Faculty, Section IV. Tenure, G and K, be amended as presented below,

PART FOUR
PERSONNEL POLICIES

….

V. TERMINATION OF CONTRACT

The contract of a Faculty member is terminated either by retirement or by separation from the Faculty position. Such separation occurs only by 1) resignation, 2) by mutual agreement, 3) by nonreappointment, 4) because of the discontinuance of a department or program (as listed on the University's Programs webpage, and updated from time to time, including without limitation: majors, minors, emphases, certifications, concentrations, and programs), 5) because of financial exigency or budgetary hardship, 6) for inability to return from leave for a serious health condition following a Family and Medical Leave Act (FMLA) leave and/or any leave made as a disability accommodation, or 7) by dismissal for cause.

….

F. Termination of Contract because of Financial Exigency or Budgetary Hardship

The termination of an appointment with continuous tenure or of a term appointment before the end of the specified term may occur 1) because of financial exigency as declared by the Board of Directors, or 2) the Board of Directors' determination of budgetary hardship.

i. FINANCIAL EXIGENCY

Financial exigency is defined as an imminent financial crisis which, in the opinion of the Board of Directors, based upon reliable projections of the University's financial officers, threatens the survival of the University as a whole. Financial exigency involves an immediate fiscal emergency that has two characteristics: 1) being long-term in nature, promising to persist by all reasonable projections into the foreseeable future; and 2) threatens its very survival. Financial exigency requires the University to provide notice to the U.S. Department of Education and University accreditors, and to develop a teach-out plan for affected students. The Board would declare financial exigency only when it is determined that the University is unlikely to survive and in such instance, if closure is deemed avoidable, certain University academic programs would need to wind down and then cease. To represent and protect the interests of the Faculty, the following procedures shall be carried out:

1. Designated Faculty, other than officers of the administration, serve as representatives of the Faculty on University established committees/task forces (i.e. University Committee on Resource Allocation or University Budget Committee) which assume the responsibility for recommending that the President announce that financial exigency either exists or is imminent. In any such announcement, the President shall report the recommendations of such committees/tasks forces, the administration's attempts to pursue all feasible alternatives (for example, less radical retrenchments), as well as relevant supporting evidence of the exigency which is at least imminent. Any recommendation that financial exigency exists will be presented by the President to the Board of Directors.

2. Once financial exigency is declared by the Board of Directors, the judgments determining where within the overall academic program termination of appointments should occur will be initially recommended by the Faculty through a cross-departmental committee elected, within 3 business days of financial exigency determination, by the Faculty Council for this purpose.

3. The designated Faculty committee also will recommend the criteria for identifying the individuals whose appointments are to be terminated. Factors to be considered in determining these criteria should include such items as tenure, rank, years of service, and unique contributions to the University's programs.

4. The Provost/Academic Vice President has the responsibility for identifying the individuals whose appointments are to be terminated. Such employment decisions will not be subject to appeal.

5. Notice of termination of appointment of a Faculty member because of financial exigency shall be as indicated in the following schedule:

    a. prior to or during the second full Academic Year of appointment, no later than three months before termination
    b. after completion of the second full Academic Year of appointment, no later than six months before termination.

    Any portion of the period of notice of termination may be replaced by payment of the normal salary with applicable fringe benefits for that portion.

ii. BUDGETARY HARDSHIP

1. Annually and prior to any Board determination of budgetary hardship by the Board of Directors, representatives from the Finance Committee of the Board of Directors, the President, the Provost/Academic Vice President, the Vice President for Finance & Administration (and other University administrators as appointed by the Board or President) will review with the Faculty Council Chair and the University Committee on Resource Allocation (UCRA) (or equivalent group to be determined by the Board of up to four (4) Faculty members with appropriate financial or other relevant backgrounds) (hereinafter collectively "the University Budget Review Committee") a projected operating statement and liquidity analysis for the subsequent (3) three fiscal years (the current year and the next two

fiscal years), which are reconcilable to the most recent fiscal year GAAP financial statements with appropriate assumptions and excluding material one-time gains and losses.

2. The Board of Directors may adopt a resolution to address budgetary hardship in cases where operating losses and financial instability exist and the Board determines, following consultation with the Vice President of Finance & Administration, that action is needed and in the best interests of the University to restore financial stability and implement the University strategic plan. Such demonstrated budgetary hardship exists when any of the following occur:

   (1) The University forecasts a continuing operational budget shortfall without extraordinary cost-cutting measures and/or windfalls for a period of three (3) or more fiscal years (the current year and next two fiscal years) such that the projected operational budget shortfall equals a cumulative loss of at least 6% of net revenues, provided however, if the liquidity ratio is below 1 (defined as unrestricted net assets over debt), budgetary hardship is triggered at a cumulative forecasted loss of 3% rather than 6% for the same three-year period; and/or
   (2) external factors beyond the reasonable control of the University that may place the University in a position of not being able to meet financial standards mandated by the U.S. Department of Education or the University's regional accreditor.

3. Upon a Board determination of budgetary hardship, the Board will request that the President submit within at least sixty (60) calendar days of the determination a plan to implement permanent cost savings sufficient to 1) eliminate the forecasted loss by the third year and 2) permanent and temporary cost savings to reduce the losses in the first and second years by at least 50% (hereinafter referred to as "Cost Savings Targets."). The President will determine the amount of permanent and temporary cost savings to be targeted by area (i.e. academic, staff and administration, non-personnel expenses etc.), typically based on the proportion of operating expense by area except the President may, in the President's discretion, adjust these targets as appropriate for reasons disclosed to and reviewed by the University Budgetary Review Committee prior to President's submission of the plan to the Board.

4. As it relates to the Cost Savings Targets for academics, the Provost/Academic Vice President and Deans shall identify both permanent and temporary cost savings opportunities not related to eliminating tenured positions for each of the three (3) fiscal years subject to review (i.e. academic operating expenses, part-time or adjunct faculty use, faculty-related expenses, salary reductions for faculty taking into consideration decisions made by the University for salary reductions as part of a general reduction in employee salaries as provided for under Part Three, Section IV.K). Within fifteen (15) calendar days of receipt of the Cost Savings Targets from the President, the Provost/Academic Vice President will finalize this list of cost savings and forward the proposals to the President.

5. If such identified temporary and permanent cost savings, in the judgment of the President, are not feasible and/or do not meet the Cost Savings Targets for academic expenses and teaching resources, the Provost/Academic Vice President will convene the Deans and a

Budgetary Hardship Review Committee – consisting of the Provost/Academic Vice President, the Deans, and one (1) appointed faculty member from each College and one (1) faculty member from the University Budget Review Committee - within five (5) calendar days of submission of the list from the Provost/Academic Vice President to the President under #4 above. The Budgetary Hardship Review Committee will review academic and faculty efficiencies and other program review and metrics by department to determine permanent personnel cost savings targets by academic department (e.g. the elimination of faculty positions). The Provost/Academic Vice President and Deans, in consultation with the Budgetary Hardship Review Committee, may propose adjustments to these departmental Cost Savings Targets, with consideration of the need for compensating reductions in other academic departments. The recommendations of the Budgetary Hardship Review Committee must be finalized within fifteen (15) calendar days of being appointed by the Provost/Academic Vice President. This consultation may occur outside the Academic Year, as defined in this Handbook.

6. The Provost/Academic Vice President, in consultation with the Deans, will consider how teaching resources/faculty positions will be reduced within an identified department. In doing so, the Provost/Academic Vice President will make good faith efforts to prioritize the following order for faculty terminations: first terminating part-time faculty, then non-tenured faculty, and then lastly tenured faculty. In making recommendations for termination of tenured faculty, the Provost/Academic Vice President will generally consider relevant factors such as years of service; rank; student course and programmatic needs and interests; and/or unique contributions to the department and the University and its programs. The finalization of the recommendations of faculty terminations by department due to budgetary hardship must be completed within fifteen (15) calendar days of the finalized recommendations under step no. 5 above.

7. The Provost/Academic Vice President will present the finalized recommendations regarding academic departments/programs and employment of Faculty members to the President, who will make final determinations. The final determinations will be presented by the President and/or Provost/Academic Vice President to the Board for approval, disapproval or revision within 120 days of the Board's determination of budgetary hardship. The Board will review the determinations at its next meeting or a special meeting called for this purpose.

8. Following the Board's decision-making regarding the determinations, the President and/or Provost/Academic Vice President will provide notice to affected Faculty members in a manner that will allow them to plan for future academic and employment decisions, as set forth below.

9. While circumstances at hand will dictate the chosen course of action, where appropriate and as determined by the Provost/Academic Vice President, in consultation with the Deans, Faculty members with tenure, rank, years of service, unique contributions to the University's programs, or other factors determined relevant within the discretion of the Provost/Academic Vice President will be given consideration, and the University will make a good-faith attempt to relocate an affected Faculty member to another suitable

position within the University where a need exists and for which the Faculty member is qualified.

10. Such employment decisions will not be subject to appeal.

11. Notice of termination of appointment of a Faculty member because of budgetary hardship shall be as indicated in the following schedule:

a. prior to or during the second full Academic Year of appointment, no later than six months before termination
b. after completion of the second full Academic Year of appointment, no later than twelve months before termination.

Any portion of the period of notice of termination may be replaced by payment of the normal salary with applicable fringe benefits for that portion.

12. This Section F.ii and the processes it outlines apply exclusively to situations of budgetary hardship. Its provisions and protections, and also those in F.iii below, reflect the unique and central role of Faculty tenure at the University in supporting academic freedom in research, teaching, and service to the University.

iii. A tenured Faculty member whose appointment is terminated for reasons of financial exigency or budgetary hardship will not have such terminated position filled by a full-time replacement within a period of three years, unless the released Faculty member has been offered reinstatement and a reasonable time in which to accept or decline it or has otherwise been employed by the University in a full-time capacity prior to the expiration of the three-year period.

iv. A tenured Faculty member whose appointment is terminated for reasons of financial exigency or budgetary hardship is provided with the following privileges and benefits until the earlier of the 12-month anniversary of termination or the time interval between termination and obtaining full-time employment at the University or an outside employer:

a. tuition benefits of the Faculty under the terms of applicable university policies, and/or
b. purchase of hospitalization and medical insurance at the University's group rate, but at the full expense of the terminated Faculty member, plus any administration fees, unless age sixty-five or older. If age sixty- five or older, then, upon enrollment in Medicare Parts A and B, terminated Faculty members may elect University-sponsored group supplemental medical and prescription drug coverage at the University's group supplemental rate, but at the full expense of the terminated Faculty member, plus any administration fees. This benefit may run concurrently or consecutively with rights the Faculty member may have to continuation of medical coverage under the Consolidated Omnibus Budget Reconciliation Act (COBRA), and/or
c. discount purchasing at the bookstore and on orders placed through the Purchasing Office, and/or
d. use of the library, and/or
e. upon request, and subject to availability, periodic and temporary office or research space.

v. Following a declaration by the Board of financial exigency or a Board determination of budgetary hardship, any steps in the Amendment and Revisions of the Faculty Handbook (Part V) – including Faculty involvement in the process - may occur outside of the Academic Year.

vi. The process outlined in this section F. iii is controlling and supersedes any other Handbook language to the contrary regarding the subject matter set forth in the section.

Additionally, as a result of the above amendments, Part Three, Rights and Responsibilities of the Faculty, Section IV. Tenure G and K require amendments as follows:

G. Tenure ceases for one of the following reasons: (1) active status is relinquished due to retirement, resignation, or mutual agreement, or (2) termination occurs because of discontinuance of a department or program (as defined below); because of financial exigency or budgetary hardship; or for inability to return from leave for a serious health condition following a Family and Medical Leave Act (FMLA) leave and/or any leave made as a disability accommodation, or by dismissal for cause.

……

K. Tenured appointments are held continuously in accordance with the provisions of this Handbook, and such appointments are not contingent upon issuance of annual renewals or contracts. Members of the Faculty who have tenure are notified in writing at normal contract issuance time about salaries, changes in rank, and other conditions of service for the next Academic Year. They are expected to give written response within six weeks after such notification. In no case shall the rank or salary of a tenured Faculty member be reduced except by mutual agreement or as part of a general reduction of salaries to avoid reaching the point of financial exigency or to avoid reaching the point of budgetary hardship.