

FACULTY COUNTER PROPOSAL TO THE BUDGETARY HARDSHIP AMENDMENT

OVERVIEW:

- 1) Strengthens the Faculty Handbook's commitment to the *1940 Statement of Principles on Academic Freedom and Tenure*
- 2) Creates a Faculty veto for future amendments that would weaken the protections for academic freedom described in the *1940 Statement*
- 3) Creates Faculty representation on the Board of Directors to enhance shared governance and provide the possibility for both parties to communicate properly, especially on budgetary matters
- 4) Clarifies language on Faculty control over department closures and Faculty redeployments
- 5) Creates a "Budgetary Hardship" standard with objective criteria that Faculty may evaluate: "Budgetary Hardship" results in temporary reductions in compensation for all Faculty and administrators, but *cannot* threaten academic freedom by terminating Faculty members

[1) Strengthens the Faculty Handbook's commitment to the *1940 Statement of Principles on Academic Freedom and Tenure*]

Faculty Handbook, Part Three

III. ACADEMIC FREEDOM AND RESPONSIBILITY

... a full list of particulars.

Aside from the narrow religious exception that prevents faculty from explicitly attacking the Catholic faith and Catholic morals in the classroom, the *1940 Statement of Principles on Academic Freedom and Tenure* ("1940 Statement") is the preeminent definition of both academic freedom and tenure.

Any statement elsewhere in this Handbook that conflicts with, weakens, or in any way undermines the *1940 Statement* (other than the religious exception mentioned above) is void.

The American Association of University Professors occasionally updates their interpretations of the language of the *1940 Statement*. It is the responsibility of the Handbook Committee to alert the faculty of any such changes as soon as reasonably practical after they are made, so that the Handbook's definition and any needed interpretations remain current on a yearly basis.

To protect academic freedom, no amendments to this Handbook may attempt to alter the language of the *1940 Statement*, except to update the *1940 Statement* to align with its most current version, as outlined above. No amendments to this Handbook may conflict with, weaken, or in any way undermine the *1940 Statement* (other than the religious exception mentioned above).

In the case of unilateral action by the Board to amend the Handbook in a way that the Faculty Handbook Committee determines violates the *1940 Statement*, the Faculty shall have a right to exercise a veto, as described in Part Five, Section I.I. A successful faculty veto is final and cannot be overruled by the Board of Directors, who are otherwise able to amend this Handbook regardless of the will of the Faculty (according to Part Five, Section I.I.3 of this Handbook).

[2) Creates a Faculty veto for future amendments that would weaken the protections for academic freedom described in the 1940 Statement]

Faculty Handbook, Part Five

I. AMENDMENT PROCEDURES

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B. The proposing body will create a draft proposal that will be shared with the Faculty Handbook Committee and the Faculty. The draft proposal will be sent to Faculty Council, and that body will act as managers to disseminate the proposal to the faculty and administration. There will be a period of review and comment that lasts 30 days. During that time, the proposers will host hearings or discussions to which the entire university community are invited. *As part of its review, the Faculty Handbook Committee will determine whether the proposal violates the 1940 Statement and will notify the proposing body accordingly.* Following feedback and suggestions, the proposers will have an opportunity to revise their proposal in light of recommendations received.

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I. When an amendment proposed by the Board of Directors has not received the majority required for approval by the Faculty, the Board may still adopt the amendment on its own authority, *except in cases where the proposed amendment affects the 1940 Statement, tenure, and/or the Faculty's academic freedom, in which case the Faculty shall have the right to veto the proposed amendment in accordance with Part Three, Section III of this Handbook.* In such cases the following shall obtain:

1. The Board shall notify the Faculty Handbook Committee of its intention and shall consult with them about the matter, requesting such information concerning the action taken by the Faculty as the Board shall deem advisable. *If the Faculty Handbook Committee determines that the final version of the Board's amendment violates the 1940 Statement, the Faculty Handbook Committee shall advise the Board of this.*
2. *If the Board chooses to move forward with an amendment that the Handbook Committee has determined violates the 1940 Statement, the Faculty will have an opportunity to veto that amendment. The veto shall be subject to the same quorum and voting thresholds required to amend the Handbook.*
3. *If the Faculty have not exercised their right to veto the amendment due to a violation of the 1940 Statement, and the final action of the Board is*

adoption of the amendment, it shall then become part of the Faculty Handbook upon proper notification but

- a. the new amendment shall not take effect until the Academic Year following the next issuance of contracts, and
- b. an authentic copy of the new amendment shall be attached to the first contract or letter of appointment issued to each Faculty member after the amendment has been adopted.

[3) Creates Faculty representation on the Board of Directors to enhance shared governance and provide the possibility for both parties to communicate properly, especially on budgetary matters]

Faculty Handbook, Part One

IV. STANDING COMMITTEES OF THE FACULTY

The following shall be standing committees of the Faculty:

The Faculty Council⁴

The Faculty Handbook Committee

The Faculty Grievance Committee

The Faculty Board of Review

The Faculty Representatives on the Board of Directors

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E. The Faculty Representatives on the Board of Directors

1. Responsible to: the Faculty.
2. Basic Objective: to act as a conduit of information between the Faculty and the Board of Directors, which enhances the shared governance of the University.
3. Composition: three (3) Faculty members elected by the Faculty for rotating terms of three (3) years, who will serve as full voting members of the Board of Directors.
4. Duties:
 - a. to attend all full meetings of the Board of Directors, including executive sessions
 - b. to attend all Faculty Council and general Faculty Meetings and meet regularly with the Chair of Faculty Council
 - c. to ascertain and convey the perspectives and concerns of the Faculty to the Board of Directors, especially regarding the responsibilities of the Faculty toward shared governance, as outlined in Part One, Section V. of this Handbook
 - d. to understand the perspectives and convey the concerns of the Board of Directors to the Faculty, especially regarding the responsibilities of the Faculty toward shared governance, as outlined in Part One, Section V. of this Handbook
 - e. to gain a concrete understanding of the University's budgetary situation, in order to help the Faculty in their responsibility to contribute to university budget decisions (as outlined in Part One, Section V.F of this Handbook)

- f. to convey concrete information about the budget to elected Faculty representatives who will review University financial data and consult with Standing Committees of the Faculty as appropriate to aid the Faculty in their responsibility to contribute to University budget decisions (as outlined in Part One, Section V.F of this Handbook)
- g. to otherwise act as a conduit of information between the Faculty and the Board of Directors and to enhance the shared governance and transparency of the University wherever appropriate.

[4) Clarifies language on Faculty control over department closures and Faculty redeployments]

Faculty Handbook, Part Four

V. Termination of Contract (This section remains unchanged: all of the Board of Directors' proposed amendments to this section are unacceptable because they infringe upon academic freedom.)

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E. Termination of Contract because of the Discontinuance of a Department or Program for Educational Reasons

Termination of an appointment with continuous tenure, or of a probationary or other nontenured appointment before the end of the specified term, may occur as a result of *bona fide* formal discontinuance of a program or department of instruction when not mandated by financial exigency, but only when the Faculty member concerned cannot be placed in another suitable position in the University. The locus of tenure is the University as a whole, not any subdivision (department, college, program) thereof. Therefore, the elimination of a department, college, program or other sub-entity of the University in which a Faculty member has tenure does not entail the elimination of that Faculty member's tenure rights. It is for this reason that the Faculty member has the right to be relocated. The following standards and procedures for discontinuance for educational reasons will apply:

(1) The decision to discontinue formally a program or department of instruction will be based wholly upon educational considerations. Given that matters of curriculum are the primary responsibility of the Faculty (according to Part One, Section V. of this Handbook), only the Faculty and not administrators will make this decision.

Note that academic programs cannot be defined ad hoc. The term "program" designates a related cluster of credit-bearing courses that constitute a coherent body of study within a discipline or set of related disciplines. When feasible, the term should designate a department or similar administrative unit that offers academic majors and minors. Programs must be recognized academic units that existed prior to a decision to discontinue them.

(2) "Educational considerations" do not include cyclical or temporary variations in enrollment, and must not be based on primarily financial considerations. They

shall reflect long-range judgments that the educational mission of the University as a whole will be enhanced by the discontinuance.

(3) Elected representatives of the Faculty charged to review academic and curricular policies will oversee the review of the discontinuation.

(4) In the event that this discontinuation will result in possible terminations of Faculty members, potentially affected Faculty members will be provided at least thirty days in which to respond to the review of the discontinuation, prior to final recommendations being made. Tenured and tenure-track Faculty members and Faculty collaborators will be invited to participate in these deliberations.

(5) In the event that this discontinuation will result in possible terminations of Faculty members, the Faculty as a whole will vote to confirm the recommendations resulting from this review. Validation of any recommendations requires a quorum of at least 60% of the faculty to vote on the discontinuation. A supermajority of at least 60% of those voting must vote to discontinue the program.

(6) Given that a Faculty member in a discontinued program has a right to relocation, before the administration issues notice to a Faculty member of its intention to terminate an appointment because of formal discontinuance of a program or department of instruction, the University will make every effort to place the Faculty member concerned in another suitable department or administrative unit. Relocation efforts must involve consultations between the affected Faculty member, the Provost/Academic Vice President, the relevant academic dean(s), and the chairs of relevant departments to identify suitable sites for continued teaching and scholarly contributions that meet the needs of the department and fit the qualifications of the affected Faculty member. Such deliberations must also take into account the ability of the Faculty member to contribute to the Core Curriculum and other programs of instruction that extend beyond the confines of an individual academic department. If placement in another position would be facilitated by a reasonable period of training, financial and other support for such training will be proffered. If no tenable position is available within the institution, with or without retraining, the Faculty member's appointment then may be terminated. Notification in writing shall be given to each affected Faculty member at least twelve months before the date of 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.

Note that when the University proposes to discontinue a program or department of instruction based upon educational considerations, it should plan to bear the costs of relocating, training, or otherwise compensating Faculty members adversely affected.

(7) A Faculty member who contests a proposed relocation or termination resulting from a discontinuance has a right to a full hearing before a Faculty Grievance Committee. The issues in such a hearing may include but are not limited to the institution's failure to satisfy any of the above prescribed standards and procedures. In the hearing, a Faculty determination that a program or department is to be discontinued will be considered presumptively valid, but the burden of proof that a Faculty member cannot be relocated will rest on the administration.

(8) Within three years of the discontinuance, if substantially the same department or program is reinstated, whether under the same or a different name, then each released Faculty member must be offered reinstatement and given a reasonable period of time in which to accept or decline the offer.

F. Termination of Contract because of Financial Exigency (This section remains unchanged: the existing language in the Handbook on Financial Exigency should be retained. We have been given no good reason to change it).

[5) Creates a “Budgetary Hardship” standard with objective criteria that Faculty may evaluate: “Budgetary Hardship” results in temporary reductions in compensation for all Faculty and administrators, but *cannot* threaten academic freedom by terminating Faculty members]

Faculty Handbook, Part Three

IV. Tenure

G. (This section should remain unchanged: the two proposed amendments to this section are unacceptable because they infringe upon academic freedom.)

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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 of a tenured Faculty member be reduced. In no case shall the salary of a tenured Faculty member be reduced except as part of a general reduction of salaries to avoid reaching the point of financial exigency or as a result of Budgetary Hardship (See Part Four, Section XV of this Handbook).¹⁹

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Faculty Handbook, Part Four

[New Section] XV. BUDGETARY HARDSHIP

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.

1) Such demonstrated Budgetary Hardship will obtain when any of the following four conditions are met:

(1) The University experiences a 15% or greater decline in revenue in the current fiscal year and forecasts no improvement in that metric for the next two fiscal years. Once the second week of the current academic year has begun, the

current year's revenue may be forecasted based on the number of currently enrolled students and the average student retention rate over the last five years.

(2) The University experiences an average of 5% or greater decline in revenue over three years (the current fiscal year and the prior two years) and forecasts no improvement in that metric for the next two fiscal years. Once the second week of the current academic year has begun, the current year's revenue may be forecasted based on the number of currently enrolled students and the average student retention rate over the last five years.

(3) The financial situation has resulted in a significant negative impact on University financial ratings, such that the ratings have dropped two letter scores over the course of five years (for example, from AAA to A) by a major accrediting agency (such as Standard and Poor's or Fitch).

(4) External factors beyond the reasonable control of the University exist that place the University in the position of being unable to meet financial standards mandated by the U.S. Department of Education or the University's regional accreditor within the next two years.

2) Following a Board determination of Budgetary Hardship, the Faculty Representatives on the Board of Directors will meet with Faculty representatives elected to analyze University budgetary information. The elected Faculty members may request and should be given access to all the information they believe is necessary to determine whether criteria for Budgetary Hardship have been met. The elected Faculty members will distribute their findings to the Chair of Faculty Council and the Faculty so the Faculty may verify that conditions of Budgetary Hardship are *bona fide*. This determination will be made within ten (10) business days while Faculty are under contract, and within fifteen (15) business days if the emergency arises in summer when Faculty are off contract.

3) Following the Faculty's determination of the nature of the Budgetary Hardship, the Provost & Academic Vice President will consult with Faculty Council and the elected representatives of the Faculty tasked with understanding the University budget to identify options to address the Budgetary Hardship outside of the University's standard program review and assessment processes. This consultation may occur outside the Academic Year, as defined in this Handbook. Following this consultation, the Provost and Academic Vice President will review identified options and make recommendations regarding financial solutions.

4) Following consultation with the Provost and Academic Vice President, the President will make a determination of final recommendations. The final recommendations will be

presented by the President and/or Provost and Academic Vice President to the Board for approval, disapproval or revision within 30 business days of the Board's determination of budgetary hardship. The Board will make determinations on the recommendations at its next meeting or a special meeting called for this purpose. Following the Board's decision-making regarding the recommendations, the President and Provost & Academic Vice President will provide notice to Faculty members within 20 business days.

5) Acceptable financial solutions for Budgetary Hardship include temporarily reducing Faculty salaries. Because they constitute a crisis response, these reductions may occur at any time of the year.

6) Acceptable solutions shall distribute the financial burden across both Faculty and administrators (all assistant, associate, and full Deans, Vice Presidents, and the President) as a whole. The cuts to Faculty salaries shall be distinct from those of administrators, with the cuts to administrators at a higher proportion to their salaries than that of Faculty members.

7) All financial solutions administered as part of the Budgetary Hardship apply for the single academic year in which they first take effect, after which the Faculty members will be restored to their previous financial compensation. In the case of ongoing financial crisis, a new declaration and confirmation by the Faculty of Budgetary Hardship is required each academic year.

8) Faculty members should be made financially whole, to compensate them for their financial losses during the time of Budgetary Hardship. Faculty members who have lost salaries shall have those funds restored to them, plus interest (the average federal funds rate over the period of lost pay).

9) No staff members or administrators (all assistant, associate, and full Deans, Vice Presidents, or the President) may receive bonuses before all Faculty members are made financially whole. No administrator may be made financially whole before all Faculty members are made financially whole.

10) Any termination of Faculty members for Budgetary Hardship reasons is a violation of academic freedom and prohibited by Part Three of this Handbook. Therefore, no member of the Faculty may be terminated as a result of this process. Faculty may only be terminated for reasons outlined in Part Three and Part Four, Section V. of this Handbook.