

January 25, 2021

VIA ELECTRONIC MAIL

Dr. Russell P. Dawn  
President  
Concordia University Chicago  
7400 Augusta Street  
River Forest, Illinois 60305

Dear President Dawn:

The faculty senate of Concordia University Chicago has sought the advice and assistance of the American Association of University Professors as a result of recent actions taken by the CUC governing board and administration to suspend key provisions in the faculty handbook, discontinue academic programs, and terminate faculty appointments. One of the faculty members whose appointments were terminated, Dr. Daniel R. Tomal, a tenured full professor with twenty-two years of service at the institution, has also sought our assistance. Other faculty members who have asked us to intervene have requested anonymity from fear of retaliation. We understand, further, that, in order to obtain meager severance salary and benefits, affected faculty members have been obliged to sign separation agreements containing strict nondisclosure provisions.

Based on the information we have received, our understanding of what has occurred is as follows.

In a July 24, 2020, memorandum, Dr. Erik Ankerberg, the university's provost, announced that the institution's governing board and "membership team" had embarked on a four-month "program prioritization process."<sup>1</sup> According to the memorandum, the purpose was to "assess . . . academic programs and administrative functions" in order to "allocat[e]" the university's "funding and resources strategically." Driving the process, the memorandum explained, was "the demographic 'cliff' that all Midwestern colleges and universities were facing, CUC's declining enrollments, a "curriculum and faculty" disproportionately larger than the student body, and the COVID-19 pandemic."<sup>2</sup> All of these "pressing realities" required the university to take immediate steps to prepare for anticipated future stresses on its "already fragile finances." The memorandum stated that the governing board and administration hoped to save or reallocate ten million dollars within two years through the prioritization process, to be led by a "steering group" composed of administrative officers and an outside financial consultant. The memo said

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<sup>1</sup> During the past decade, the AAUP has received numerous complaints from faculty members at institutions where an "academic prioritization" process has disregarded widely accepted principles and standards of academic governance and academic freedom and tenure. The Association has investigated and placed four of these institutions on its list of censured administrations. See *Academic Freedom and Tenure: National Louis University* (2013), *Academic Freedom and Tenure: Felician College* (2015), *Academic Freedom and Tenure: University of Southern Maine* (2015), *Academic Freedom and Tenure: College of Saint Rose* (2016).

<sup>2</sup> Faculty sources have informed us that the administration announced record enrollments this fall.

nothing about the faculty's role in either designing or implementing the process, and we understand that the faculty played no role.

In early September, the university's board of regents adopted an "Interim Policy for Employment Actions" suspending those provisions of the faculty handbook that related to academic tenure (section 3.4.9) and substituting a two-sentence reduction-in-force process for the existing five-page set of procedures (section 3.5), among other radical changes. The express purpose of the policy, effective September 12 through December 31, 2022, was "to allow for necessary employment actions, consistent with financial circumstances and/or the prioritization process." It authorized the president unilaterally "to implement reductions in force, consistent with the prioritization process" and "applie[d] to all full-time and part-time University employees, whether permanent or temporary." The superseded reduction-in-force policy contained provisions requiring robust faculty participation in all stages of decision-making, transparency on the part of the administration, a faculty appeal process, and several other procedural rights found in most such policies. The expunged tenure policy incorporated the academic due-process protections without which indefinite tenure does not exist. The memorandum outlining the new policy said nothing about any faculty involvement in its development, approval, or implementation, and faculty sources have informed us that the faculty played no role.

On November 12, in a memorandum addressed to the board of regents, the president, and the provost, the faculty senate communicated its concerns about these drastic changes to the faculty handbook and about anticipated program cuts and faculty layoffs. Entitled "Response to Concordia University Chicago Prioritization Process," the memorandum requested, among other things, "an immediate . . . reinstatement of tenure . . . and reduction-in-force policies" and "a sole focus on financial decisions when cutting programs and people." The last request, the memorandum stated, arose from the perception that faculty members will be selected for layoff based not on financial considerations but "on the religion or perceived world-view of faculty members." It is our understanding that the senate has received no response.

On December 10, in a letter addressed to the governing board, the administration, and the faculty senate, thirty-one faculty members from the departments of English, interdisciplinary studies, music, theater, art, mathematics and computer science, natural science and geography, communication, and social work registered their "concern about the way in which the impending terminations" were "being handled." Specifically, the letter stated, "We feel that it is wrong to terminate faculty members without regard for the faculty handbook." The letter added, "Abrupt terminations in the middle of the school year during a global pandemic reflect a disregard for core Biblical principles the university claims to uphold. . . . Our terminated colleagues will face real hardship that threatens their ability to provide for their own basic needs and those of their families. They deserve a truthful consistency to policies already written in the faculty handbook, and behavior that reflects the values of [a] Christian community." We are not aware that the signers of this letter have received a response.

On December 11 and 12, the board of regents finalized the decision to close fifteen academic programs—including graphic arts, theater, chemistry, women's and gender studies, and business

communication—and to terminate the services of fifty-one members of the faculty and staff, including long-serving faculty members with tenure.

During the following week, Provost Ankerberg and a human resources officer met by video conference call with Professor Tomal and other affected faculty members to inform them of the decision to terminate their appointments.

In a January 4 email message, the faculty senate again urged the board of regents to reinstate the faculty handbook's tenure and reduction-in-force policies and again pressed the administration to cease terminating appointments.

In a January 5 letter addressed to you, the Illinois Conference of the AAUP conveyed its concerns regarding a reported lack of faculty involvement in the decision-making that led to the program closures and appointment terminations; failure to afford any due-process protections to the affected faculty members in apparent "contravention of widely adopted academic standards"; and unilateral suspension of critical provisions in the faculty handbook effected by the board of regents. "If these reports are accurate," the letter stated, "egregious violations of accepted standards of academic freedom, tenure, and governance have occurred."

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The interest of our Association in these developments at Concordia University Chicago stems from its longstanding commitment to principles and standards of academic freedom and tenure as enunciated in the enclosed 1940 *Statement of Principles on Academic Freedom and Tenure*, jointly formulated by the AAUP and the Association of American Colleges and Universities and endorsed by more than 250 scholarly societies and other higher-education organizations. Derivative procedural standards are set forth in the AAUP's *Recommended Institutional Regulations on Academic Freedom and Tenure* (also enclosed).

As you are doubtless aware, the understanding of academic freedom and tenure prevalent in American higher education derives from the 1940 *Statement*, which makes the case that academic freedom in higher education serves the common good and that tenure is necessary to protect academic freedom. The underlying premise is of course that faculty members whose appointments are insecure will lack the freedom to teach, conduct research, and participate in institutional governance with the utmost effectiveness.

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As the Illinois AAUP letter observed, the AAUP recognizes only three bases for terminating a tenured faculty appointment (or a full-time term appointment prior to its expiration): (1) adequate cause (i.e., for reasons related to a lack of professional fitness), (2) a bona fide financial exigency, and (3) a program discontinuance for educational reasons. The Association regards any other basis as illegitimate. AAUP-supported procedural standards governing terminations on these three bases are set out in Regulations 4 and 5 of the *Recommended Institutional Regulations*.

Since the ostensible reasons for terminating appointments at CUC were financial, the provisions of Regulation 4c, “Financial Exigency,” are most relevant.

Under Regulation 4c, a college or university may terminate tenured appointments for financial reasons only after the institution declares a state of financial exigency, defined as “a severe financial crisis that fundamentally compromises the academic integrity of the institution as a whole and that cannot be alleviated by less drastic means” than terminations of appointment.

In accord with principles of shared academic governance, as articulated in the enclosed *Statement on Government of Colleges and Universities*, Regulation 4c requires faculty participation in every phase of decision-making related to the declaration of financial exigency, the reduction or closing of programs, and the resulting terminations. To quote the AAUP’s *On Institutional Problems Resulting from Financial Exigency* (enclosed), “There should be early, careful, and meaningful faculty involvement in decisions relating to the reduction of instructional and research programs,” adding that “the financial conditions that bear on such decisions should not be allowed to obscure the fact that instruction and research constitute the essential reasons for the existence of the university.”

Regulation 4c therefore provides that

- “an elected faculty governance body” will participate “in the decision that a condition of financial exigency exists or is imminent and that all feasible alternatives to termination of appointments have been pursued,”
- the faculty as a whole or an elected representative body thereof will have “primary responsibility” for “determining where within the overall academic program termination of appointments may occur” and for “determining the criteria for identifying the individuals whose appointments are to be terminated,”
- prior to the making of any proposals on discontinuing programs, “the faculty or an appropriate faculty body will have the opportunity to render an assessment in writing of the institution’s financial condition,” and
- those faculty members whose programs are being considered for discontinuance “will promptly be informed of this activity in writing and provided at least thirty days in which to respond to it.”

To ensure that the faculty has the requisite information to make these decisions, Regulation 4c requires that the faculty be provided with access to critical financial data, including

- “five years of audited financial statements, current and following-year budgets, and detailed cash-flow estimates for future years” and
- “detailed program, department, and administrative-unit budgets.”

With respect to the due-process protections available to affected faculty members, Regulation 4c(3) requires affordance of “an on-the-record adjudicative hearing” before an elected faculty body similar in basic respects to what the AAUP recommends for dismissal (Regulation 5). In such a hearing, an affected faculty member may contest

- “the existence and extent of the condition of financial exigency,” with the burden of proof resting with the administration,
- “the validity of the educational judgments and the criteria for identification for termination,” with the important qualification that “the recommendations of a faculty body will be considered presumptively valid,” and
- “whether the criteria are being properly applied in the individual case.”

There are four final provisions:

1. Under Regulation 4c(4),

- An institution may not make new appointments when terminating appointments because of financial exigency “except in extraordinary circumstances where a serious distortion in the academic program would otherwise result” and
- A tenured faculty appointment cannot be terminated before an untenured appointment, “except,” as above, “in extraordinary circumstances where a serious distortion in the academic program would otherwise result.”

2. Under Regulation 4c(5), “Before terminating an appointment” for reasons of financial exigency, the institution, with faculty participation, “will make every effort” to find another “suitable position within the institution” for the affected faculty member.

3. Under Regulation 4c(6), “In all cases of termination of appointment because of financial exigency,” affected faculty members will be afforded notice or severance salary, at minimum, according to the following schedule:

- those in their first year of service will receive three months of salary or notice;
- those in their second year of service will receive six months of salary or notice;
- those in the third year and beyond will receive at least one year of salary or notice.

4. Under Regulation 4c(7), “In all cases of termination of appointment because of financial exigency,” the position of an affected faculty member “will not be filled by a replacement within a period of three years, unless the released faculty member has been offered reinstatement and at least thirty days in which to accept or decline it.”

As far as we can ascertain, none of the above standards were observed in the prioritization process that led to the closure of fifteen programs and the termination of an as-yet-undisclosed number of full-time faculty appointments, including some with tenure. We should note that the

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reduction-in-force procedures expunged by the board of regents, formerly set out in section 5 of the faculty handbook, comported in most essential respects with Regulation 4c.

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Our information about what has occurred has come to us from the previously mentioned sources, and we appreciate that you may have additional information that might enhance our understanding of what has occurred. We would therefore invite your response. If our account of events is essentially accurate, the governing board and administration of Concordia University Chicago—after having effectively abolished tenure and academic due process by unilaterally suspending critical sections of the faculty handbook—proceeded to shutter academic programs and terminate faculty appointments through a prioritization process that flagrantly disregarded normative principles and standards of academic governance, academic freedom and tenure, and academic due process. With respect to academic freedom, we find particularly troubling the allegation that these actions did not proceed exclusively from a financial basis but instead stemmed, at least in part, from ideological considerations.

Along with the CUC faculty senate, the faculty authors of the December 10 letter, and the Illinois conference of the AAUP, we would therefore urge that the faculty handbook be restored, that the program closures and appointment terminations be rescinded, and that any further actions be taken in accord with the above-cited principles and standards.

We look forward to your timely response.

Sincerely,

A handwritten signature in cursive script that reads "Gregory F. Scholtz". The signature is written in black ink and is positioned above the typed name and title.

Gregory F. Scholtz, Director  
Department of Academic Freedom, Tenure, and Governance

Enclosures by email attachment

Cc: Dr. Dominic Salvino, Chair, Board of Regents (c/o President Dawn)  
Dr. Erik Ankerberg, Provost  
Professor Sandra Doering, Chair, Faculty Senate  
Professor Leo Welch, President, Illinois AAUP  
Professor Daniel R. Tomal