

January 27, 2021

Mr. William P. Donnelly  
Chair, John Carroll University Board of Directors  
John Carroll University  
1 John Carroll Blvd.  
University Heights, OH 44118

Dear Mr. Donnelly,

During the general faculty meeting of January 20, 2021, you claimed that the faculty handbooks of three of our sister Jesuit universities -- Marquette, Loyola University Chicago (LUC), and Loyola University Maryland (LUM) -- contain provisions consistent with the definition of what John Carroll's board has called "budgetary hardship" in its recent proposed handbook amendment. You also argued that these universities' handbooks have procedures similar to, or even less rigorous than, the proposed procedures for defining financial hardship and for implementing faculty terminations at John Carroll (JCU). Specifically, you said that all three handbooks "have provisions that would describe the ability to reduce costs related to faculty in periods other than financial exigency and without eliminating departments." You also stated that "What we have today [in the Board's proposed amendments] is much more specific. None of those guys have thresholds. None of those guys have process definitions to the same level of rigor or detail, however you want to say it, that the current version the Board presented does."

We respectfully maintain that an analysis of those handbooks shows that those claims are in error.

In these handbooks, the distinction between "financial exigency" and a less dire condition -- defined as "budgetary hardship" in the proposed JCU amendment -- is poorly defined or, in some cases, completely undefined. Marquette's handbook (chapter 305, pp. 62-65) describes a condition labeled "chronic short-falls" defined as "a chronic shortfall of income involving authorized expenditures" that jeopardizes "the University as to require the termination of faculty." But the same section defines this condition as "a state of financial exigency." There is no distinction made between "shortfalls" and "financial exigency." In other words, Marquette's handbook establishes one, single condition of financial hardship justifying the termination of tenured faculty: financial exigency.

In the case of Loyola Chicago, the handbook establishes that "financial or other serious exigencies" might require the elimination of tenured faculty members (58). The modifier "other" is potentially expansive, but the governing noun is still "exigencies" and not a less dire standard. LUC's handbook mandates that the remedy for "financial or other serious exigencies" is the wholesale elimination of programs, not the "surgical" elimination of tenured faculty. Finally, Loyola University Maryland establishes standards for the termination of tenured faculty, but only in the case of "financial exigency," defined as "actual and projected operating deficits for the usual fiscal years of the institution which cannot be resolved by ordinary measures . . . without substantially impairing the operation of the institution." Here is a definition of financial hardship that is less rigorous -- indeed, the word "rigor" is not applicable at all to LUM's definition -- than that proposed by the JCU board. But, once again, the procedures for defining this condition, and the processes available to aggrieved faculty, are far more thorough than in the proposed JCU amendment.

Regarding processes for engaging relevant stakeholders in determining a state of budgetary hardship, or some condition short of financial exigency, most of these handbooks,

including the JCU proposal, fall short. Only LUM engages appropriate stakeholders to determine a condition of budgetary crisis. In JCU's proposed amendment, upon a determination of budgetary hardship by the Board of Directors, the President will submit within sixty calendar days a plan for permanent cost savings. The determination of budgetary hardship is vested exclusively in the hands of the Board, and its initial remedy in the President. This is not a model for shared governance.

Only LUM establishes processes for defining states of financial exigency that engage faculty meaningfully. LUM does so in a much more extensive manner than proposed in the JCU Board's amendment. At LUM, the President's determination of financial exigency is reviewed by a committee with extensive faculty representation that receives a "full presentation of the financial state of the University." This committee is empowered to seek "additional information, including the opinion of outside consultants." The committee must determine whether it agrees with the President's decision. If  $\frac{2}{3}$  agree, the faculty senate convenes to determine criteria for faculty termination. If  $\frac{2}{3}$  fail to agree, the final determination of financial exigency is made by the Board.

It is certain that JCU's proposed amendment lags behind all three of the comparator institutions in establishing processes for determining remedies for financial crises. According to the language in the Board's proposal, in the event of declaring budgetary hardship, JCU's Provost/AVP will work with the Deans to identify permanent and temporary cost savings not including termination of tenured faculty. If the President concludes that these recommendations fall short of meeting savings targets for the academic division, the Provost/AVP will convene a Budgetary Hardship Committee including only three faculty members that will recommend the elimination of faculty positions. The Provost/AVP will make recommendations for termination to the President that will "generally consider relevant factors," but the President is not bound to follow these recommendations in eliminating tenured faculty positions.

LUC's handbook stipulates that in a condition of "financial or other serious exigencies" the University might find it necessary to "curtail or eliminate some educational programs." Thus, in contrast to the proposed "surgical" tools to be made available to JCU administrators, LUC adheres to a program-wide standard for eliminating faculty. Further, LUC clarifies that "Wide consultation with the concerned segments of the University community, data and documentation, timely notice" and recommendations by relevant bodies, including "the Faculty Committee of the University Senate, and the Senior Academic Officer," will be implemented in cases of faculty termination -- which are "expected to be extremely rare occurrences." Marquette's handbook stipulates that any decision to terminate faculty will be preceded by a "careful review" including the Provost, Faculty Council, and University Academic Senate.

Finally, LUM and Marquette establish procedures for terminated faculty to appeal administration decisions, an option explicitly denied to them by the current JCU proposal. Marquette guarantees fired faculty the right "to appeal to the Faculty Hearing Committee," a subcommittee of the Faculty Council. Faculty fired at LUM have the right to appeal to the Board on Rank on Tenure, which "may decide whether the criteria and the provisions of" the relevant section of the handbook "were properly and fairly applied."

In summary, all three of these handbooks have serious flaws in how (or whether) they define a condition of financial crisis short of financial exigency, in their processes for engaging faculty and other stakeholders in determining the state of financial crisis, in developing appropriate remedies for that crisis, and in affording faculty the right to appeal their termination. Handbooks that are strong in some areas are noticeably deficient in others. In no case, however, is the proposed JCU amendment superior to the best practices in these three comparator institutions, taken together. In all three areas -- defining a condition short of exigency; engaging stakeholders in making that determination; fashioning remedies; and affording faculty the basic justice of an appeal -- John Carroll's amendment is inferior to at least one of these handbooks.

As you know, faculty governance bodies are interested in finding a compromise solution that acknowledges faculty co-responsibility for meaningful stewardship of JCU resources, embraces robust and trust-building shared governance, and preserves tenure consistent with the AAUP's 1940 statement. Our common work -- that of the Board, our administration, and the faculty -- must rest on a common understanding of fundamental facts. It is in this spirit that we bring the above points to your attention, and request a clarification of your reading of the passages from those AJCU faculty handbooks to which you referred at the January 20th general faculty meeting.

Very respectfully,

Faculty Handbook Committee  
Faculty Council Executive Committee  
AAUP Chapter Executive Committee

cc: Dr. Michael Johnson, President  
Dr. Steven Herbert, Provost  
Ms. Colleen Trembl, General Counsel, University Legal Affairs