

February 2, 2024

VIA ELECTRONIC MAIL

Dr. Milo Rivero
President
Manhattan College
4513 Manhattan College Parkway
Bronx, New York 10471

Dear President Rivero:

Six tenured members of the Manhattan College faculty have contacted the national office of American Association of University Professors for advice and assistance after having received, on Friday, January 12, 2024, letters from Interim Provost Dr. Rani Roy notifying them of the terminations of their appointments. They are Professor Marlene Gottlieb, a tenured professor of Spanish with fifty-six years of service; Professor Jeff Horn, a professor of history with twenty-three years of service; Professor Mary Ann Jacobs, a professor of education with thirteen years of full-time service; Professor Jordan Pascoe, a professor of philosophy with eleven years of service; Professor David Shefferman, a professor of religious studies with eleven years of service; and Professor Dominika Wrozynski, a professor of English with ten years of service.

Provost Roy's letters informed these faculty members that their appointments would be terminated for financial reasons effective June 15, 2024, in response to a deficit in the past year and projected deficits in the next two. The administration, the letters said, was "making reductions in all areas of the college academic programs, faculty positions, non-teaching personnel, and other operating expense lines," as the administration had "no other options, no easy answers, and little time to act."

Provost Roy's letter offered faculty members a choice between two severance agreements, the more generous of which would allow them to teach through the remainder of the academic year and provide them salary and some benefits through the remainder of the calendar year. It did not refer to any process by which faculty members could contest the administration's decisions, and none of those who has contacted us has been afforded such an opportunity.

We understand that the administration sent similar letters to twenty-three faculty members across seventeen academic departments. The information available to us suggests that approximately seventeen of these faculty members hold tenured appointments and that at least twenty-four non-tenured faculty members will retain their appointments in the affected departments.

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We are also aware that on January 29, in response to your administration's actions, the council for faculty affairs announced that 147 of the 210 full-time faculty members at Manhattan College had voted on a resolution of no-confidence in your leadership, asking the board of trustees to "appoint leadership that actively engages [the] faculty in the essential planning required to overcome" the college's challenges. The resolution passed with 130 votes in its favor.

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Our Association's interest in these cases stems from our longstanding commitment to principles of academic freedom, tenure, and academic governance articulated in the 1940 *Statement of Principles on Academic Freedom and Tenure* and the *Statement on Government of Colleges and Universities*, both of which are enclosed for your reference.

The 1940 *Statement* was the joint formulation of the AAUP and the American Association of Colleges and Universities (formerly the Association of American Colleges) and over the last eighty-three years has gained the endorsement of more than 250 scholarly societies and higher education organizations. As the 1940 *Statement* observes, "The common good depends upon the free search for truth and its free exposition." Under the 1940 *Statement*, tenure—understood as an indefinite appointment terminable only for cause "or under extraordinary circumstances because of financial exigency"—is the means of protecting academic freedom in teaching, scholarship, and intramural and extramural speech. The underlying premise is that faculty members whose appointments are insecure will lack the freedom to teach, conduct research, and participate in institutional governance without fear of institutional sanction. We are pleased to note that the Manhattan College faculty handbook states that the college has adopted the 1940 *Statement* and reiterates the *Statement's* requirement that terminations of faculty appointments for financial exigency must be "demonstrably bona fide."

The *Statement on Government* was jointly formulated in 1966 by the AAUP, the American Council on Education, and the Association of Governing Boards of Universities and Colleges. The *Statement* affirms that an institution's faculty "has primary responsibility for such fundamental areas as curriculum, subject matter and methods of instruction, research, and faculty status," including "appointments, reappointments, decisions not to reappoint, promotions, the granting of tenure, and dismissal." Decisions in these areas should be made primarily by the faculty, and the governing board's or administration's "power of review or final decision" should be used to overturn those decisions "only in exceptional circumstances, and for reasons communicated to the faculty."

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Procedural standards derived from the 1940 *Statement* and the *Statement on Government* are set forth in the AAUP's *Recommended Institutional Regulations on Academic Freedom and Tenure* (also enclosed). Regulation 4c ("Financial Exigency") of the

Recommended Institutional Regulations specifies the procedures that must be followed when terminating faculty appointments because of financial exigency. These procedures are designed to ensure that the terminations are demonstrably bona fide and to protect tenure, academic freedom, and the faculty's primacy in academic matters .

Regrettably, the evidence in our possession suggests that your administration's actions in these cases have diverged from these essential standards.

Determination of Financial Exigency

Regulation 4c(1) defines financial exigency 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 faculty appointments. Regulation 4c(1) states that “as a first step” in this process, an elected faculty body must participate in determining whether an institution's crisis rises to that level and in ensuring that these less drastic means are exhausted prior to resorting to terminations of faculty appointments. That faculty body should participate in the consideration of “feasible alternatives” to terminations, including “expenditure of one-time money or reserves as bridge funding, furloughs, pay cuts, deferred compensation plans, early-retirement packages, deferral of nonessential capital expenditures, and cuts to noneducational programs and services, including expenses for administration.”

The information provided to us indicates that neither the Manhattan College faculty as a whole nor its elected representatives were involved in the assessment of the college's financial condition nor in a determination that there were no other feasible alternatives to terminations of faculty appointments. Rather, on October 10, 2023, you informed a group of faculty leaders that the administration had developed a plan to reduce the faculty “from 225 to 175” members and to eliminate and consolidate academic programs. In an email message to those same leaders on October 17, you solicited “feedback and recommendations” on the administration's potential actions, but you also noted that such “recommendations need to lead to a reduction in instructional costs and faculty lines.”

Program Reduction

Following a determination that the institution's financial situation is exigent, the faculty, not the administration, must play the central role in determining how the institution's academic program will be affected. Under Regulation 4c(1), 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.” To ensure that the faculty has the information necessary for making these decisions, Regulation 4c(2) provides that the administration will afford the faculty 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.”

We understand that the Manhattan College faculty and its representatives were not involved in the development or adoption of the criteria for determining which programs would face reductions and which faculty appointments within those programs would be terminated. An appendix to the severance agreement faculty received on January 12 states that the administration had made the decisions about which appointments to terminate based

on an objective methodology in furtherance of the College’s financial budgeting requirements, enrollment, academic and programmatic needs, streamlining, centralization, and consolidation. The method accounts for course sizes and course efficiencies, with consideration for administrative roles, over the past five (5) semesters by employee (if the faculty member has been employed for that period and excluding semesters on sabbatical); in the event that the results were the same, the employee was selected based on the last date of hire at the College.

This “objective method” was not developed by the faculty, which, again, should have had primary responsibility for doing so in virtue of its expertise and responsibility for the academic program of the institution. Program reductions effected without such faculty involvement can dramatically impair a college’s ability to serve its academic mission and deliver the education its students deserve. Moreover, these criteria are so vague that affected faculty members are unlikely to be able to discern or contest the reasons for their selection. Their termination letters provide no further information, and we understand that, despite numerous requests from faculty, the administration has declined to participate in further discussion of these criteria or their application to individual cases.

Preference for Retaining Tenured Appointments

Under Regulation 4c(4), an administration that terminates faculty appointments in conditions of financial exigency will not at that time make new faculty appointments, nor retain untenured appointments rather than tenured ones, except in “extraordinary circumstances where a gross distortion of the academic program would otherwise result.” Tenure becomes meaningless when an administration, in exigent circumstances, fails to distinguish between tenured and untenured appointments in deciding which appointments to continue and which to terminate.

The criteria cited in the severance agreements do not include a preference for retaining tenured over non-tenured positions except in extraordinary circumstances. Seniority, rather than tenure, is mentioned, but only as a tie-breaking criterion to distinguish between otherwise equivalent candidates. Indeed, data provided in the severance agreement reveal that in nine departments, senior faculty members received a termination

letter while assistant professors were retained. The criteria also indicate that termination decisions were based on assessment of individual faculty members' past course enrollments and duties, without consideration of whether affected tenured faculty members could assume the duties of the remaining nontenured faculty members. This is unacceptable under principles of academic freedom and tenure.

Alternative Suitable Positions

Under Regulation 4c(5), prior to terminating an appointment for reasons of financial exigency, the administration will, with faculty participation, "make every effort" to find the affected faculty member "another suitable position within the institution," where this is understood to mean another tenured faculty appointment. This standard reflects the fact that the AAUP regards tenure as held within an institution rather than within a particular academic program, and it helps to ensure that terminations are based on bona fide financial exigency rather than impermissible considerations.

There is no indication that the administration has made any effort to retain the affected faculty members by shifting their responsibilities within their academic department—perhaps handling duties previously assigned to nontenured faculty members—or by securing them a suitable position in another academic department.

Due Process

Regulation 4c(3) describes the standards of due process that must be provided to affected faculty members. They must be afforded, prior to termination, a full adjudicative, on-the-record hearing before a faculty committee" similar in basic respects to what the AAUP recommends for dismissal (see Regulation 5, "Dismissal Procedures"). In that hearing, an affected faculty member must be able to 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."

As we have noted, the affected faculty members at Manhattan College appear to have been afforded no such hearing. This is all the more worrisome in light of the administration's unilateral and opaque decision-making in this process thus far.

Notice or Severance

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 a 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; and
- those in the third year and beyond will receive at least one year of salary or notice.

Sections 2.9.3 and 2.9.4 of the Manhattan College faculty handbook draw upon these standards in its severance terms for faculty members whose appointments are terminated based on financial exigency, and it adds that faculty members in their third year of service or beyond must receive notice by September 1 of what would be their terminal academic year. The handbook further notes that when the administration does not provide notice by that date, it will provide the faculty member “severance pay equal to the salary he or she would earn in the period involved in later notice,” presumably in order to provide affected faculty members a full year to secure another faculty position elsewhere. In this case, that would mean one year’s severance from September 1, 2024, to August 31, 2025. However, even the most generous versions of the severance package offered to affected faculty members fail to provide long-serving faculty members severance on these terms.

Reinstatement Rights

Finally, Regulation 4c(7) provides that faculty members whose appointments are terminated for financial exigency will, for the subsequent three years, be offered reinstatement before their former positions are filled by replacements. No such condition is included in the severance agreement, nor has your administration provided affected faculty members such assurances.

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The information we have received concerning these cases has come to us primarily from Manhattan College faculty leaders and affected faculty members. We would therefore appreciate any information you might share that would contribute to our understanding of the situation.

However, assuming that the above recounting is essentially accurate, the actions taken appear to disregard AAUP-supported standards, and our Association joins in the faculty’s concern, conveyed in its no-confidence resolution, that your administration has engaged in “top-down curricular decisions” and “faculty layoffs without appropriate faculty

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input,” in contravention of widely shared academic standards. Such actions have dramatic consequences for academic freedom, tenure, and meaningful faculty participation in the governance of the institution. Tenured faculty members with decades of service to Manhattan College have been singled out for release based on reasons the administration has unilaterally designed and declined to explain, without taking into account their tenured status and without affording them an opportunity to contest the decision. The effect on academic freedom is obvious. Having witnessed these actions, what faculty member will dare to pursue controversial research topics, teach unpopular subjects, hold students to the highest standards, or speak unhesitatingly on matters of institutional or public concern?

We therefore urge your administration to rescind the termination letters it issued on January 12. We also urge in the strongest possible terms that any further action taken to address Manhattan College’s financial circumstances comport with the procedural standards presented in this letter and its enclosures, especially Regulation 4c(3).

We look forward to your timely response.

Sincerely,



Mark Criley

Senior Program Officer

Department of Academic Freedom, Tenure, and Governance

Enclosures by email attachment

Cc: Mr. Stephen J. Squeri, Chair, Board of Trustees
Dr. Rani Roy, Interim Provost
Professor Zhara Shahbazi, President, Council for Faculty Affairs
Professor Matthew Jura, Chair, College Curriculum Council
Professor Michael Judge, President, AAUP Chapter
Professor Mary Rose Kubal, President, State AAUP Conference
Professor Marlene Gottlieb
Professor Jeff Horn
Professor Mary Ann Jacobs
Professor Jordan Pascoe
Professor David Shefferman
Professor Dominika Wrozynski