

## **Advisory statement on due process in matters of program discontinuation**

From: Personnel Policies Committee of the Faculty Assembly of Marian University

While section 3.9.6.2 of the Faculty Handbook grants the Provost or the supervising department/school authority to *propose* discontinuation of a program to the Faculty Assembly, this section cannot be read in isolation, or as license for the academic administration to intervene in the curriculum without consideration of the broader context of the rest of the Handbook, in particular the overarching principle that *faculty have primary responsibility for the curriculum* (Handbook 1.7.1, 2.1, 2.9.8.1; Constitution paragraph 2, Art. I.A.1, Art. I.B.1).

Program discontinuation or reorganization can occur for many reasons, but under normal circumstances is initiated by, and occurs with the full participation of, the faculty of the relevant academic unit.

Unilateral initiation of the process by the administration is envisaged as limited to extraordinary cases, in particular financial exigency (2.8.5.2) or enrollment emergency (2.8.5.3). Of these, the first requires a declaration by the Board of Trustees, and the second a declaration by the President; both are situations in which the University's overall solvency is threatened.

If a program is to be discontinued on the basis of viability, the judgment of viability is normally made by the faculty. A typical threshold at Marian would be a situation where all upper-level classes have independent-study level enrollment.

It is important that the impact statements accompanying the discontinuation proposal submitted to the Academic Policies Committee are completed in good faith to avoid disruption to other programs and the general education curriculum, and to give an honest appraisal of the likely impact on staffing, in the context of Handbook section 2.8.5. Curriculum and staffing *cannot* be separated when a proposal is to be considered.

The authors of the Marian University Faculty Handbook intended that it be consistent with the guidelines of AAUP. AAUP is focused mainly on faculty welfare, and as such discusses program discontinuation primarily when it involves the termination of faculty appointments. In this case, Regulation 4d provides appropriate standards including that "the decision to discontinue formally a program or department of instruction will be based essentially upon educational considerations, as determined primarily by the faculty", and that these considerations "must reflect long-range judgments that the educational mission of the institution as a whole will be enhanced by the discontinuance". It is AAUP's position that the faculty should have an "initial and decisive role" over any deliberations on program closure, and that the decision constitutes a collective faculty judgment that such sacrifices are on balance necessary for the long-term benefit of the educational mission of the institution. (See excerpts from AAUP documents in supporting material.)

Supporting material:

## **Marian University Faculty Handbook**

### 1.7.1 Areas of Responsibility

**The faculty has primary responsibility for such fundamental areas as curriculum, subject matter and methods of instruction,** research, faculty status, and those aspects of student life which relate to the educational process. On these matters, the power of review or final decision is lodged in the Board of Trustees or delegated by it to the President, but such power, in most cases, should be exercised adversely only in exceptional circumstances, and for reasons communicated to the faculty. Following such communication, the faculty shall have the opportunity for further consideration and further transmittal of its views to the president and the Board of Trustees. Subject to the duly constituted authority of the President of the University and the By-laws and policies of the Board of Trustees, **the faculty have primary responsibility for all matters concerned with academic and faculty affairs.** Additionally, the faculty shall be considered collaborators and key advisors on all matters that pertain to the operation and mission of the University. Limits to the realization of faculty advice may be set by, among other things, budgets, personnel limitations, the time element, and the policy of other agencies having jurisdiction over Marian University. (AAUP Policy Statement, 2006, p. 139)

### 2.1 Faculty

The faculty of the University has the **primary responsibility for the curriculum and is primarily concerned with the intellectual climate and academic policies and programs.**

#### 2.9.8.1 Academic Community Cooperation

While members of the faculty have a primary responsibility to their own departments, they are also members of the larger collegial community and should, therefore, take initiative and make a demonstrated effort to work cooperatively with members of other departments/schools for the improvement of the University.

Central to meeting this obligation is active and responsible participation in the Faculty Assembly. **Faculty have the primary responsibility for development and oversight of the University's curricula and to contribute and participate in faculty governance as defined in Section 1.7.**

Faculty members take responsibility in hiring, developing, and fulfilling their membership duties.

## Constitution of the Faculty Assembly

As a body **the faculty is responsible for the development and maintenance of the curriculum and other academic policies of the University**. These responsibilities are to be carried out through the corporate actions of the faculty through regular faculty meetings, facilitated by the deliberations and actions of such committees as the faculty may from time to time see fit to establish.

### Article I. The Faculty Assembly

#### A. Purpose and Goal

1. The Faculty Assembly (hereafter "the faculty" or "the body") is an ancillary organization of Marian University, subject to the duly constituted authority of the President of the University and the By-Laws and policies of the Board of Trustees, to provide **a forum in which issues concerning academic and faculty policies of the University may be deliberated and acted upon**.
2. The faculty shall have as its end the effective attainment of the goals and purposes of Marian University.

#### B. Areas of Responsibility

1. The faculty has **primary responsibility for such fundamental areas as curriculum, subject matter, and methods of instruction, research, faculty status, and those aspects of student life which relate to the educational process**. On these matters, the power of review or final decision is lodged in the Board of Trustees or delegated by it to the President, but such power, in most cases, should be exercised adversely only in exceptional circumstances, and for reasons communicated to the faculty. Following such communication, the faculty shall have the opportunity for further communication and further transmittal of its views to the President. (adapted from AAUP Policy Statement, 10th ed., 2006, p. 139)
2. The faculty shall have the responsibility for consulting and advising on financial and such other matters that pertain to the operation and mission of the University. Limits to the realization of faculty advice may be set by budgets, personnel limitations, the time element and the policies of other agencies having jurisdiction over Marian University.

**AAUP: Recommended Institutional Regulations on Academic Freedom and Tenure (1940, revised 1972, 1976, 1982, 1990, 1999, 2005, 2006, 2009, 2013, and 2018)**

**Discontinuance of Program or Department for Educational Reasons**

d. 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. The following standards and procedures will apply.

**(1) The decision to discontinue formally a program or department of instruction will be based essentially upon educational considerations, as determined primarily by the faculty as a whole or an appropriate committee thereof.**

[Note: “Educational considerations” do not include cyclical or temporary variations in enrollment. They must reflect long-range judgments that the educational mission of the institution as a whole will be enhanced by the discontinuance.]

**(2) Faculty members in a program being considered for discontinuance for educational considerations will promptly be informed of this activity in writing and provided at least thirty days in which to respond to it. Tenured, tenure-track, and contingent faculty members will be invited to participate in these deliberations.**

[Note: Academic programs cannot be defined ad hoc, at any size; programs must be recognized academic units that existed prior to the decision to discontinue them. The term “program” should designate 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 majors and minors.]

**(3) 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 institution will make every effort to place the faculty member concerned in another suitable position. 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 position is available within the institution, with or without retraining, the faculty member’s appointment then may be terminated, but only with provision for severance salary equitably adjusted to the faculty member’s length of past and potential service, an amount which may well exceed but not be less than the amount prescribed in Regulation 8.**

[Note: When an institution proposes to discontinue a program or department of instruction based essentially on educational considerations, it should plan to bear the costs of relocating, training, or otherwise compensating faculty members adversely affected.]

(4) A faculty member who contests a proposed relocation or termination resulting from a discontinuance has a right to a full hearing before a faculty committee. The hearing need not conform in all respects with a proceeding conducted pursuant to Regulation 5, but the essentials of an on-the-record adjudicative hearing will be observed. The issues in such a hearing may include the institution's failure to satisfy any of the conditions specified in Regulation 4d. 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 on other issues will rest on the administration.

Review

e. In cases of termination of appointment, the governing board will be available for ultimate review.

### **AAUP: The Role of the Faculty in Conditions of Financial Exigency (2013)**

Administrators are making unilateral budgetary decisions that profoundly affect the curricula and the educational missions of their institutions; rarely are those decisions recognized as decisions about the curriculum, even though the elimination of entire programs of study (ostensibly for financial reasons) has obvious implications for the curricular range and the academic integrity of any university. (p.1)

We want to make it clear at the outset that many current "crises" represent shifts in priorities rather than crises of funding. Financial exigency is not a plausible complaint from a campus that has shifted resources from its primary missions of teaching and research toward employing increasing numbers of administrators or toward unnecessary capital expenditures. A campus that can reallocate resources away from teaching and research is not a campus that can justify cuts in its core mission on financial grounds. Discussions of a campus's financial state cannot be fairly or responsibly conducted without faculty consultation about budgetary priorities. Our definition of "financial exigency" is as follows: *financial exigency entails 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.* (p.4)

"Cuts in teaching and research must be a last resort, after, among other actions, the administrative budget is reviewed and reduced and supplements for athletics and other nonacademic programs are eliminated." (p.4)

As Matthew Finkin and Robert Post have written,

*[I]nstitutions of higher education serve the public interest and ... promote the common good. The common good is not to be determined by the arbitrary, private, or personal decree of any single individual; nor is it to be determined by the technocratic calculation of rational and predictable profit incentives. The common good is made visible only through open debate and discussion in which all are free to participate. Faculty, by*

*virtue not only of their educational training and expertise but also of their institutional knowledge and commitment, have an indispensable role to play in that debate.*

(Matthew W. Finkin and Robert C. Post, *For the Common Good: Principles of American Academic Freedom* (New Haven, CT: Yale University Press, 2009), 125.)

Program closures are matters of curriculum, central to the educational missions of colleges and universities - missions over which the faculty should always have primary responsibility. Closures ordered by administrative at - even, or especially, when they are ordered by administrators who believe they have done due diligence in program review - are therefore inimical not only to the educational mission of colleges and universities but also to the social contract according to which faculty expertise, academic freedom, and tenure serve the public good. (pp.4-5)

Before any proposals for program discontinuance on financial grounds are made or entertained, the faculty must be afforded the opportunity to render an assessment in writing on the institution's financial condition. The faculty body performing this role may be drawn from an elected faculty senate or elected as an ad hoc committee by the faculty; it should not be appointed by the administration. (p.11)

We see no reason to abandon or revise the AAUP's long-standing position on one-person programs, which seem to us administrative devices for cherry-picking tenured faculty members for release. (p.13)

[T]his transformation of the curricular landscape would appear to have made it easier for administrations to define "programs" whose proposed discontinuance is simply a means of terminating one troublesome tenured professor. (p.14)

[B]ecause the AAUP maintains that tenure is held in the institution rather than any department, college, program, or other subdivision within the institution, we believe that it is incumbent upon institutions to be ... creative in finding ways to relocate faculty members whose programs have been discontinued. (p.15)

If an undergraduate major or a graduate program is eliminated but lower-level courses continue to be offered (as is the case with many reductions of foreign-language programs), the professor who is reassigned from upper-level to lower-level courses is not considered to be relocated "elsewhere." Tenure rights enable the professor to assume the teaching of lower-level courses that have been taught by non-tenured faculty members; departments and colleges should not assume that if upper-level courses are eliminated, the tenured faculty members who taught them need to be released as well.

Again, the AAUP holds that the locus of tenure is in the institution as a whole, not in any subdivision (department, college, program) thereof. Therefore, the elimination of a program in which a faculty member has tenure does not entail the elimination of that faculty member's tenure rights, and it is for this reason that he or she has the right to be relocated.

We note also that an increasingly common justification for program closure is “low completion rates,” that is, low numbers of graduates per year. We believe that gauging enrollment simply by counting the number of student majors is especially inimical to sound academic judgments. Often, modern languages such as French and German are unduly penalized by such calculations, because they discount the number of students who meet language requirements by taking courses in French and German without majoring in those subjects.

We reaffirm the AAUP’s long-standing opposition to the elimination of “one-person” programs, which allows for selective, arbitrary termination of tenured faculty members; and we reaffirm the principle that tenured faculty members hold tenure in the institution as a whole, not in any college, department, program, or other subdivision thereof. We also affirm long-standing AAUP policy that all full-time faculty members who have taught at an institution for over seven years are considered to be within the cohort of the tenured, whether or not they have undergone formal tenure procedures. (p.19)

We cannot say this strongly enough: the widespread closure of academic programs, when undertaken by administrations unilaterally or on occasion with a fig leaf of faculty participation, represents a significant threat to the foundations of American higher education. These initiatives essentially transform colleges and universities from educational to managerial institutions, in which instruction in a course of study is simply another “deliverable” and where programs are so many inventory items to be discounted, downsized, or discontinued according to a reductive logic of efficiency and the imperative to lower labor costs whenever possible. We are not as a rigid matter of principle opposed to program closures. The AAUP has long acknowledged that a college or university can discontinue a program of instruction, but our standard has been that if the discontinuation is not undertaken for financial reasons, it must be shown to enhance the educational mission of the institution as a whole[.] (p.20)