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# Academic Freedom and Tenure: National Louis University (Illinois)<sup>1</sup>

(APRIL 2013)

## I. Introduction

This investigation concerns the actions taken by the administration of National Louis University in spring 2012 to discontinue numerous academic programs (nine degree programs and five nondegree certificate programs), to close four departments in the College of Arts and Sciences (English/philosophy, fine arts, mathematics, and natural sciences), and to terminate the appointments of at least sixty-three full-time faculty members, sixteen with continuous tenure, all terminations to be effective as of fall 2012.

National Louis University, with its main campus in downtown Chicago, four other locations in various Chicago suburbs, and additional locations in Milwaukee and Tampa, was founded in 1886 by Elizabeth Harrison, an early advocate for the training of kindergarten teachers, or “kindergartners” as they were then called. The institution began as Miss Harrison’s Training School and was renamed the Chicago Kindergarten Training School in 1887 and then the Chicago Kindergarten College in 1894. Its name was changed again, in 1930, to the National College of Education, when it introduced the first

four-year teacher-training program in Illinois and became the professional school of the National Kindergarten Association. Following a substantial donation in 1982 from philanthropist Michael W. Louis, the college added degree programs in the fine arts, humanities, and social sciences, and, four years later, a business school. In 1990, the institution was renamed National Louis University to honor its major donor.

According to its website, the mission of National Louis University is to provide “access to quality higher education that nurtures opportunity for students through innovative teaching, scholarship, community engagement, and service excellence.” NLU today consists of three colleges—the National College of Education, the College of Arts and Sciences, and the College of Management and Business—which before reductions that began in 2011 together offered more than sixty undergraduate and graduate academic programs to approximately ten thousand students, 80 percent of them part time, with degrees extending to the doctoral level.

## II. Background

Dr. Nivine Megahed, the institution’s eleventh president, has served in that capacity since 2010. Prior to her appointment at NLU, she had been president since 2006 of Kendall College in Chicago. In 2008, Kendall College was purchased by Laureate Education Inc., a for-profit educational-services corporation headquartered in Baltimore that owns and operates educational enterprises both in the United States and abroad. Before the purchase, in January 2008, Dr. Megahed became a member of the board of directors for Laureate’s online Walden University.

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1. The text of this report was written in the first instance by the members of the investigating committee. In accordance with Association practice, the text was then edited by the Association’s staff and, as revised with the concurrence of the investigating committee, was submitted to Committee A on Academic Freedom and Tenure. With the approval of Committee A, the report was subsequently sent to the faculty members at whose request the investigation was conducted, to the administration of National Louis University, and to other persons directly concerned in the report. In light of the responses received and with the editorial assistance of the staff, this final report has been prepared for publication.

The principal agency of faculty governance at NLU is the faculty association, to which all full-time faculty members belong. The faculty senate, made up primarily of faculty representatives from each of the three colleges, is the legislative body of the faculty association and is described as being responsible for formulating policy pertaining to, among other matters, the faculty governance structure; faculty standards, conduct, discipline, and appeals; faculty appointments, retention, rank, tenure, and promotion; freedom of expression and academic freedom; and curricular and program review. In addition, the senate's stated responsibilities include acting in an advisory capacity to the president in such matters as university budget priorities. The senate is further described as working through standing committees (for example, the Senate Finance Committee and the Senate Academic Planning Committee), with elected membership from each of the three colleges, and through special committees, their members appointed by the senate chair, the faculty association, or the senate.

### **III. The Events of 2011–12**

In July 2011, Provost Christine Quinn announced to the faculty senate that budget cuts already implemented were sufficient to deal with the university's financial challenges and that, as a result, a planned comprehensive review of all academic programs, part of an existing strategic plan, was postponed. During fall 2011, however, monthly revenue shortfalls, news of which was shared with senate committees, grew—reportedly to \$5 million. The board of trustees met in December 2011, and shortly thereafter faculty senators and senior administrators attended a retreat that focused on the growing revenue shortfall and the need for a comprehensive review of all academic programs, the goal of which would be to cut costs. At the time, no framework existed for carrying out the review of academic programs. In late January 2012, the group of senate members and administrators met again, at which time the faculty senators agreed to participate in the program review. Faculty members told the undersigned investigating committee that at both the January meeting and at a subsequent meeting of the entire NLU community, faculty participants made clear their expectation that in cutting costs the administration would respect both tenure and academic freedom and observe the rules and past practices of NLU, as it had done in the course of previous program and faculty cuts.

The program review was conducted by two task forces, operating under a budget steering committee

that set a cost-cutting goal for each task force. The charge given to the first, the Academic Prioritization Task Force, was “to review academic programs and make recommendations for priority investments. This will include recommendations to enhance, maintain, re-engineer, or eliminate programs.” The majority of the task force's members were faculty, appointed by the faculty senate chair. The second task force, which also included faculty members, was charged with reviewing all nonacademic areas, including NLU locations, leases, benefits, and nonfaculty positions. The investigating committee was unable to obtain details regarding the amount of cuts to administrative costs recommended by the second task force or to ascertain whether any such cuts were actually made by the administration.

The administration based its review of academic programs on Dr. Robert C. Dickeson's work on academic prioritization. His book *Prioritizing Academic Programs and Services: Reallocating Resources to Achieve Strategic Balance* was distributed to each member of the two task forces, and a consultant was brought to NLU to explain the prioritization review process to members of the task forces as well as to other members of the NLU community. Faculty members reported to the investigating committee that at the meeting with the consultant, they objected to any part of the prioritization process that would violate tenure, academic freedom, or NLU's current rules and past practice.<sup>2</sup>

From January to March 2012, the Academic Prioritization Task Force reviewed each academic program at NLU. Its deliberations were confidential. The

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2. The Association has encountered Dr. Dickeson before. In August 1982, Dr. Dickeson had yet to complete his first year as president of the University of Northern Colorado (UNC) when his administration notified forty-seven faculty members, including thirty-nine with continuous tenure, of the termination of their appointments at the end of the academic year. The administration asserted that its actions were necessitated by “program exigency” rather than “financial exigency,” yet it referred exclusively to financial grounds while declining to demonstrate that financial difficulties could not be alleviated by means less drastic than abrogating tenure. An AAUP investigation resulted in imposition of censure by the 1982 annual meeting.

In fall 1983, a citizen of India joined the UNC faculty as a probationary assistant professor of journalism. He spoke out on issues of concern during his very first semester, convening a committee on intellectual freedom, sponsoring a petition expressing lack of confidence in President Dickeson, and publishing an article in the student newspaper calling for the president's resignation. In April 1984, the assistant professor publicly faulted the president for his handling of the investigating committee's draft report. That summer the head of the journalism

investigating committee did not learn whether minutes were kept or, if they were kept, in what form they were accessible to task-force members. By mid-March 2012, the task force had categorized each program. The committee cannot say whether formal votes were taken on each program or on the final categorization of the programs. Faculty members reported having expressed a variety of concerns during the deliberations, including concern about evaluating a program using quantitative categories that did not accurately or adequately capture the work of the faculty members in the program. It did become clear that some programs had few majors, but faculty members in these programs taught courses that supported significant numbers of nonmajor students in nonprogram courses. For example, members of the faculty in biology taught few, if any, courses in the biology degree program but rather taught a full load of both general

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department routinely filed a petition with the United States Immigration and Naturalization Service requesting renewal of the assistant professor's nonimmigrant visa status, and the petition was routinely approved. Receipt of the approval by an attorney who assisted President Dickeson led to a meeting with INS officials who were asked what UNC needed to certify in order to support the petition. Informed that UNC needed to certify that the assistant professor showed outstanding merit and exceptional skills, the president's attorney stated that he could not truthfully so testify. He executed a form withdrawing the petition, and the assistant professor and his department chair, neither of whom had been consulted about the withdrawal of the petition, learned only then that the lack of a valid visa would prevent the assistant professor from being reappointed. A supplementary report on academic freedom and tenure at the University of Northern Colorado, published with Committee A's approval in November 1985, concluded that not renewing the appointment was impermissible under generally accepted principles of academic freedom.

Dr. Dickeson left the UNC presidency in 1991 (the AAUP censure was removed a year later) and, over the ensuing two decades, has had an active career as a higher education consultant and author, specializing in keeping costs down, protecting governing boards, reducing the faculty payroll, and exposing the supposed downsides of faculty tenure. He has been a cofounder and senior vice president of the Lumina Foundation, his *Prioritizing* book is currently in its second edition, and he prepared a "Frequently Asked Questions about College Costs" paper for former secretary of education Margaret Spellings's Commission on the Future of Higher Education. He also advised the commission that "faculty salaries are especially expensive," that "the time-honored practice of tenure is costly," and that tenure has "evolved" from a mechanism to protect academic freedom into a "system to protect job security." "To understand the management of a college" he wrote, "one must understand the unique culture and extraordinary power of the faculty. . . . To many faculty, they are the university." They assume that they "own all curricular decisions." If too many are tenured, Dr. Dickeson argued, the university loses "institutional flexibility."

education courses required of all undergraduate students and upper-level science courses to students majoring in elementary education and concentrating in science. In addition, faculty members on the Academic Prioritization Task Force recalled the consultant's observation that a comprehensive prioritization review usually involved a full year of collecting and analyzing data on academic programs; faculty representatives objected to the rushed two-month period allotted to their work. Also, faculty members complained that information on the qualitative aspects of the academic programs was collected over only a one-week period. Faculty concerns about the hastiness of the review process were apparently unheeded.

On March 19, 2012, the Academic Prioritization Task Force presented the Budget Steering Committee with the results of its review in the form of a list of academic programs in order of priority. Faculty members were told by the administration that a new budget would be created based on the list of program priorities. Several faculty members said that they believed that the administration would create a budget and make recommendations to the faculty, which would feed into NLU's standard procedures for the closure of programs; the faculty in those programs slated for closure or reorganization would then be afforded an opportunity to respond. This expectation, however, was not to be fulfilled.

On March 21, the faculty senate met, with top administrators in attendance. Professor Tim Collins, senate chair, reported in a March 28 e-mail message to all faculty members that President Megahed "acknowledged that between 60 and 70 full-time faculty will lose their jobs as a part of the reduction in force required to prepare a balanced budget for next year. . . . The President reaffirmed that reductions in force would respect Faculty Policy 114" ("Policy on the Rights of Tenure-Track Faculty Pertaining to the Closing of Campuses, Programs, and Colleges/Library"). In a second e-mail message to the faculty later that day, Professor Collins wrote: "[M]any faculty wonder if tenured faculty will be released in the reduction in force (which is permitted by NLU policy in the case of program closings). According to the latest information we have, it's entirely possible that tenured faculty will be affected in this way, based on the results of the prioritization."

On April 16, at a joint meeting of the senate, its Academic Planning Committee, and representatives of the administration, the administration presented a list of degree and certificate programs and departments

that it proposed to eliminate. The senate met in executive session that same day to consider the proposal. First the Academic Planning Committee and then the full senate passed the following motion: “Faculty senate and SAPC [Senate Academic Planning Committee] *accept* the recommendations of the Academic Prioritization Task Force for programs, departments, and certificates, recognizing that we *cannot approve* the findings individually for lack of adequate review and/or agreement. Faculty senate and SAPC affirm Faculty Policy 114 as the sole legitimate means to dismiss tenured faculty without cause” (emphasis added). According to the April 23 minutes of the Senate Finance Committee meeting, even though the senate had voted to accept the recommendations of the Prioritization Task Force on April 16, it was “not endorsing the reductions in force.”

On April 17, the administration notified sixty-three full-time faculty members, sixteen of whom were formally tenured, that their positions were being terminated. On that day, as the notices were being issued, President Megahed, in a letter addressed to the university community, reported that

our institution has undergone a transformative review process to allocate resources according to our strategic priorities. [They] . . . are: academic excellence through a robust and rigorous contemporary curriculum, an educational experience that supports student success, and financial sustainability based on a cost-effective model that provides opportunity for those who seek to better themselves through education. Since January we have engaged in a multi-stakeholder, shared governance review of all administrative functions and our academic portfolio.

The president went on to announce that, pursuant to this prioritization process, the institution was discontinuing numerous academic units—four departments (English/philosophy, fine arts, mathematics, and natural sciences, all composed entirely of tenured faculty), nine degree programs, and five nondegree certificate programs—effective with the fall 2012 term and terminating the appointments of tenured as well as full-time nontenured faculty members, many of them with long years of service, in core academic areas. With regard to the criteria for program elimination, the president stated further that

the primary rationale . . . was low to negligible enrollment over the past several years, indicating

lack of student demand for the program. . . .

Other variables considered in the review process included mission-relevance to NLU, demand for graduates relative to the employment market, program quality, and cost of instruction relative to net revenues. In all cases, more than one variable contributed to the recommendation to eliminate the program.

President Megahed stated in a May 4, 2012, *Inside Higher Ed* article that “serious fiscal pressures on the university” and a significant decline in enrollment required “tak[ing] action immediately.” While the NLU administration had shared its rising deficit figures with the faculty, the administration did not declare financial exigency. Faculty members noted that the decision to discontinue the affected programs, with the consequent termination of tenured faculty appointments, was not preceded by the administration’s having demonstrated that the magnitude of the budgetary constraints facing the institution necessitated department and program closures and the termination of faculty appointments. They contended that the administration did not come forth with specific figures showing the amount of money these actions would save, and they challenged the enrollment figures, which, they stated, were cited as the basis for eliminating these departments and programs.

Faculty leaders invited Professor Howard Bunsis, the AAUP’s secretary-treasurer from 2008 to 2012 and a professor of accounting at Eastern Michigan University with considerable experience in institutional budget analysis, to evaluate the university’s financial condition. In an April 26 on-campus forum, Professor Bunsis reported his conclusions that NLU “is not in dire financial condition: there are sufficient reserves and a low level of debt, in addition to solid cash flows in recent years”; that terminations of faculty appointments would not save much money; and that administrative costs had not yet been addressed in the efforts to reduce overall expenses. President Megahed was quoted in a May 4 *Inside Higher Ed* article as having stated that this report was based on “outdated” and “incomplete” data and that “if you look at the entire picture, there are serious fiscal pressures on the university, and we will have to take action immediately.”

Faculty members whose appointments were terminated were informed by letter of April 17 from Mr. Thomas Bergmann, the vice president of human resources, that they could either accept a terminal

ten-month contract or severance payment or initiate a “bumping procedure,” the details of which had yet to be worked out. A fourth choice made available to faculty members who met stated requirements of tenure status, age, and service was to enter into a “Faculty Voluntary Separation Incentive Program (FVSIP)” that provided them with one year’s salary spread over two years. Later, both those who accepted the terminal contract and those who selected the FVSIP were required to sign a waiver of all claims against the university. In early May, faculty members received an e-mail message from the newly established Bumping Oversight Committee, composed of four faculty members elected by the senate, which met for the first time on April 26. The committee’s objective, according to the message, was “to develop and implement a respectful and timely bumping process that allows it to make recommendations to the Provost, who makes the final decisions.” Under the provisions of this process, faculty members with more seniority, whose eligibility to “bump” had been confirmed by the administration, and who could show they were qualified to teach another faculty member’s courses, could replace or bump that individual in order to remain on the faculty.

Faculty members reported that, of the sixteen tenured faculty members in the four arts and sciences departments whose positions were terminated, only one was offered a permanent position in another department. This professor had served as an administrator for the past ten years and had returned to the faculty ranks in fall 2011. Several faculty members reported that the administration made no effort to find permanent positions for the fifteen other tenured faculty members. Some released full-time faculty members were offered individual courses to be taught as “seasonal” adjuncts, at approximately \$2,000 a course, with the proviso that they could teach no more than seven courses in a year. Since so many of the faculty members laid off had teaching responsibilities outside their programs—for example, general education courses or courses required for a concentration in a different major—many of the courses previously taught by the released faculty members continue to be offered.

On May 4, 2012, the faculty association, meeting in emergency session, voted overwhelmingly to call upon the administration to “rescind its letters of termination to all tenured faculty members” and “reverse the elimination of departments.” It also called upon the administration to “make available financial data that have been used as the primary rationale for cutting faculty, but that faculty have not seen.” By

letter of May 31, President Megahed responded to the faculty association’s resolutions, rejecting calls to rescind the letters of termination and to reverse the elimination of departments. She stated:

In January 2012, stakeholders from across the university participated in an academic and administrative prioritization review process as an outgrowth of NLU’s strategic plan, and which included the review of general education courses by discipline/department. The work of the two task forces which was comp[os]ed of significant faculty representation yielded recommendations that were further reviewed by the Budget Steering Committee and NLU Leadership. Final recommendations were reviewed and supported by SAPC and the senate, and then approved by the Board of Trustees. The University engaged in a shared governance process that resulted in decisions that reflected thoughtful review and considerations of the budgetary and strategic issues facing the institution. Moreover, decisions were implemented in accordance with institutional policy.

With regard to the faculty association’s request for the release of additional financial data, the president stated that “[i]nformation relevant to the financial condition of the University and related to the budgetary and strategic issues [has] been shared throughout the year.”

On June 4, 2012, after a series of faculty association and senate meetings, the chair of the faculty senate wrote to President Megahed, board of trustees chair Richard Ross, and the board’s chair-elect Scott Smith, asking for a discussion of how the recent actions followed the policies and procedures of NLU and for a reversal of any actions “we collectively determine not to have adhered to policy and/or procedure of NLU.” President Megahed responded in an e-mail message to the senate that she would be willing “to meet with the faculty to listen deeply to the concerns at hand.”

During summer 2012 the Faculty Appeals Committee met to consider the appeals of two tenured faculty members whose services had been terminated. The committee concluded that NLU should immediately reinstate the two professors as tenured members of NLU’s faculty and added that “there are several other faculty members who were dismissed under very similar conditions but did not appeal. The University should also consider their immediate reinstatement as tenured faculty members.” In its

decision the committee noted that NLU Faculty Policy 104 (“Awarding of Promotion and Tenure”) states that “National Louis University understands tenure to mean only that a faculty member has a continuing full-time appointment with the University.” The committee added that while Policy 114 allows for an exception to Faculty Policy 104 when there is a closing of a campus, program, or college, the elimination of academic departments is not a basis for termination of tenured faculty positions.

#### **IV. The AAUP’s Involvement**

The NLU faculty first sought the AAUP’s advice and assistance on January 29, 2012, when Professor Tim Collins, then senate chair, sent an e-mail message to the AAUP’s staff requesting information on conducting no-confidence votes and on the rights of administrators to attend faculty meetings. These issues had become points of concern, the staff was told, because NLU was “facing a big financial challenge.” No further communications came from NLU faculty until a March 2 e-mail message in which Professor Collins indicated that while faculty members had participated in a cooperative spirit in the prioritization process, they were now alarmed because “the administration may want to cut individual tenured professors, as part of the ‘re-engineering’ of different programs.” On March 26, again by e-mail message, he elaborated that the administration expected to lay off as many as sixty-three full-time faculty members, sixteen of whom were tenured.

After the NLU administration proceeded with the department closures and notified affected faculty members of the termination of their services, the AAUP staff wrote to President Megahed on May 7, identifying the Association’s concerns regarding the decision to discontinue academic programs and terminate faculty appointments without any meaningful faculty participation in the key decision-making processes. The staff also emphasized the administration’s apparent failure to make every effort to place the affected faculty members in suitable alternative positions. This failure was especially problematic given the administration’s stated intention to continue to offer a wide range of general education classes that the released professors had taught or were qualified to teach. The staff expressed further concern that the faculty members being released had not been afforded the opportunity to teach those courses and that the administration was reported to have stated that adjunct faculty members would be engaged to

teach most of them. The letter referred to Association-supported standards which provided that faculty members whose appointments were being terminated were entitled to an on-the-record adjudicative hearing before a body of elected faculty peers. In such a hearing, the staff noted, it is incumbent upon the administration to demonstrate that the stated grounds for the action were bona fide and that every effort had been made to relocate displaced tenured faculty members in suitable positions elsewhere within the institution. Finally, the staff addressed the terms of NLU’s severance package, offering as it did considerably less than one year of severance to long-serving nontenured faculty members. The letter ended by urging rescission of the notices of termination and adherence in any further action to the AAUP’s recommended procedural standards.

The AAUP received no response from President Megahed to this communication. The staff wrote again on May 21, indicating that in the absence of significant positive developments, the Association’s general secretary was prepared to authorize a formal investigation of the situation at National Louis University with a potential report to the academic community at large. By June 12, with still no response from the NLU administration, the staff wrote once more, confirming the authorization of this investigation.

Responding finally in a letter dated June 25, President Megahed challenged the authority of the AAUP to make inquiries of NLU’s administrators or to launch an investigation. Nevertheless, she did offer an account of the decision-making process that had resulted in the terminations which, in most particulars, challenged the faculty’s account. According to President Megahed, the decision-making process had conformed both to NLU’s own policies and to “overall principles of shared governance.” In a July 10 letter the AAUP staff welcomed her elaboration of the administration’s perspective on the decisions and actions of the past several months and outlined a series of issues and concerns that the investigating committee would be exploring in coming weeks.

The investigating committee convened in Chicago on October 17, 2012, and interviewed seven faculty members and collected documents for review. Follow-up telephone calls and e-mail messages elicited information from several others. Requests to President Megahed for a meeting or for a telephone interview with her or other senior administrative officers went unanswered.

## **V. Specific Cases**

The following paragraphs examine how the closure of departments and programs at National Louis University served as the basis for action affecting individual faculty members.

### **A. Professor Paul Gross**

Dr. Paul Gross, a tenured associate professor of biology in the natural sciences department, had taught at National Louis University for eighteen years when the administration announced that his department was being closed and his position terminated effective June 30, 2012. Professor Gross was so informed by a telephone call on April 16, 2012, from acting College of Arts and Sciences dean Walter Roettger, who assured Professor Gross that his termination was unrelated to the performance of his professional duties. The dean stated that the closure and termination decisions had been approved by the trustees and were irrevocable. With regard to the professor's placement in another suitable position, Dean Roettger stated that the university would continue to offer science courses as part of the general education curriculum and that he was welcome to teach these courses—provided that he did so on an adjunct basis only. The next day all National Louis faculty members received a letter from President Megahed confirming the university's ongoing commitment to general education. Indeed, general education courses, including multiple science classes, had already been listed on the fall 2012 schedule. And shortly thereafter the chairs of the four closed departments, all of whom had been notified of termination, were asked to complete the schedule of general education classes for the entire 2012–13 academic year.

Prior to the termination of his services, approximately half of Professor Gross's teaching load included both elective and required general education courses. He had devoted additional teaching time to required upper-level courses for an elementary education science concentration, which continues to be offered at the university.

In later communications with the Office of Human Resources, Professor Gross obtained further information about his severance options and learned that he had only two weeks to decide which one to take. Ultimately, he chose the Faculty Voluntary Separation Incentive Program, which was available to tenured faculty members at least fifty-five years old with at least ten years of full-time service as of December 31, 2012. Under the terms of this program, Professor Gross would receive payment of one year's salary over

two years, during which time the university would cover the cost of his medical insurance. Continuing access to health insurance was especially important to Professor Gross.

In order to participate in the FVSIP, Professor Gross was required to sign a document stipulating that his decision to retire was entirely voluntary. After consulting with a lawyer, he appended a three-page letter stating that he was signing it under duress. A week later he was required to sign an additional document waiving all legal claims against the university.

Professor Gross was also one of two tenured faculty members who elected to appeal their appointment terminations by filing an appeal, which he initiated on June 1. The appeals committee, consisting of three faculty members and a nonvoting representative of the provost, met on July 11. Under NLU policy, Professor Gross was not permitted to attend this meeting; instead, he was represented by a colleague. The committee unanimously supported Professor Gross's appeal and recommended his immediate reinstatement to his tenured faculty position. The committee made the same recommendation for the other tenured faculty member who appealed.

The committee's report on the two cases emphasized that the complainants' tenure was not located in a particular program or department but was instead "a continuing full-time appointment within the university." Under university policy, the only grounds for terminating the appointment of a tenured faculty member were either "cause," defined solely in terms of inappropriate conduct or failure to perform required duties, or the "closing of a campus, program, or college." As the committee noted, the administration clearly had not invoked "cause" in terminating the appointments of either professor. Further, the panel pointed out that university policy had no specific provision for the closing of departments, and it further argued: "The closing of the Biology Program does not provide a basis for the dismissal, since Dr. Gross's teaching load consists entirely of courses that support National College of Education programs and provide general education and elective courses to students of all three colleges. The replacement of a tenured faculty member with adjunct or nontenured faculty to teach the same or similar courses seems to us to be a clear violation of tenure." The committee affirmed that these types of courses would still be offered by the university in future academic years. Finally, it urged the administration to consider the immediate reinstatement of all

tenured faculty members whose positions had been terminated.

Provost Quinn, who received the committee's report in July, rejected its recommendations on the grounds that financial conditions justified the terminations and that no distinction exists between an instructional program and an academic department. After a mid-August meeting between the provost and the appeals committee members, the provost indicated that she would pass the committee's recommendations along to President Megahed, who would raise the matter with the trustees. The board met in mid-September, but it was not until October 17 that President Megahed communicated to Professor Gross that she concurred with Provost Quinn's finding that "no violation of the University's established policies and procedures has occurred." The president's rationale for rejecting the appeals focused on arguing that the absence of the word "department" in Faculty Policy 114 was irrelevant since terminating these two faculty appointments "reflect the same sort of strategic academic decision as is involved in a 'program' or 'college' closure."

### **B. Professor Ofra Peled**

Dr. Ofra Peled, a tenured associate professor and chair of the Department of Natural Sciences, had twenty-three years of service at NLU as of 2012, and she had served as chair of the department from 1998 through 2012.

Professor Peled was first notified on April 11 by a telephone call from Vice Provost Katherine Sheridan that the Department of Natural Sciences was being discontinued and her position terminated. The vice provost assured Professor Peled that the termination of her appointment had nothing to do with performance and also briefly outlined the severance options available to her. A week later she received a letter dated April 17 from Mr. Thomas Bergmann, vice president of human resources, reviewing the same information and stating, "Please note that you have three weeks to select an option, which is May 7, 2012, and a 30-day deadline to identify who [*sic*] you intend to bump if you select the bumping option, which is May 16, 2012."

Professor Peled met with Vice Provost Sheridan and a human resources representative on April 18. At this meeting the severance possibilities, including the bumping alternative, were described in greater detail. After an additional meeting with Dean Roettger and human resources staff, Professor Peled chose payment

of ten months of salary with no further service obligations.

Professor Peled stated that neither before nor after April 16 did any discussions occur between the department's faculty and the administration regarding alternatives to closing the department. Nor were alternatives ever discussed that would have allowed for retention of tenured natural sciences faculty members in the face of program or departmental closures, notwithstanding the fact that nine general education and upper-level science courses for students concentrating in biology or natural science would still be offered at NLU beyond the 2011–12 academic year. All of these courses had traditionally been taught by the natural sciences faculty. Also, Professor Peled and other natural sciences faculty members had been essential personnel in a project funded by a three-year grant from the National Science Foundation. The project, which focused on improved training for primary and middle school teachers in science and math, was in its second year in 2011–12. Professor Peled reported that grant-supported teacher training is now being conducted by adjunct instructors.

Professor Peled was aware that enrollments had been declining in programs offered through the natural sciences department. She explained that in 2008, in an attempt to attract students, the department established a health sciences program. At the time there was strong oral support from top administration officials, and a new faculty member was appointed to build the program. With turnover in the administration, however, little effort was made to recruit students for the program.

### **C. Professor Elinor Olin**

In 2012, tenured associate professor Elinor Olin had taught at National Louis University for twenty-five years, first in the music department and then in the fine arts department. She began teaching at the university in 1987 on a part-time basis, became a full-time faculty member in 1991, and received tenure in 1996. She was first informed of the closure of her department and the termination of her position by a telephone call from the associate provost on April 16, but detailed information on termination possibilities was not provided. Professor Olin took the initiative to contact the Office of Human Resources at a later date to learn more about the severance options available to her. A widow with two college-age children, she ultimately elected to take a ten-month terminal contract as her severance arrangement.



Professor Olin also planned to continue beyond her terminal year to teach courses on a contingent basis for approximately \$2,000 per quarter. She would teach general education courses—such as Women in Theater, Introduction to Music, and Music as Social Experience—that continued to be offered as part of the undergraduate curriculum. Professor Olin had routinely taught such courses as part of her normal workload as a tenured faculty member.

Professor Olin stated that these courses had been well subscribed, but despite their popularity, no discussions occurred between the fine arts faculty and administration officials regarding alternatives to department closure. Nor were opportunities for suitable alternative placement of tenured fine arts faculty ever discussed, despite the fact that nine general education courses in the fine arts area were still being offered.

Even though Professor Olin said she was aware of declining enrollments in fine arts courses in recent years, she reported having been completely surprised by the termination of her appointment. She recalled that the university had experienced financial difficulties in the 1990s and had even declared financial exigency at that time, but that faculty members had been placed on furlough as an alternative to terminations and that no tenured faculty members had been laid off.

The investigating committee heard similar stories from several other faculty members interviewed in person or by telephone or e-mail, but, regrettably, they declined to be identified through accounts in this report. Fears of retaliation—whether warranted or not—seemed common among faculty members who had already suffered serious career blows and who, in select cases, would continue to teach for a small stipend on a contingent basis at National Louis University.

## VI. Issues of Concern

Summarized here are what appear to the investigating committee to be the central issues.

### A. The Basis for Terminating Appointments

The joint 1940 *Statement of Principles on Academic Freedom and Tenure*, as amplified by the Association's *Recommended Institutional Regulations on Academic Freedom and Tenure*, identifies only three legitimate reasons for terminating an appointment with continuous tenure: cause, financial exigency, and discontinuance of a program or department based essentially

upon educational considerations. No one in the administration or among the faculty at National Louis University has suggested that the first reason played any role in the 2012 faculty terminations.

Throughout winter and spring 2012, NLU administrators often cited financial problems and the likelihood of deficit budgets for both 2012 and 2013, but at no point did they assert that a condition of financial exigency existed, certainly not a bona fide one, “i.e., an imminent financial crisis that threatens the survival of the institution as a whole.”<sup>3</sup> As noted above, the analysis of financial conditions at the university performed by Professor Bunsis in April 2012 concluded that “National Louis University is not in dire financial condition; there are sufficient reserves and a low level of debt in addition to solid cash flows in recent years.”

Only discontinuance of a program or a department remains as a basis for terminating tenured appointments, which is the reason the administration provided to the affected faculty members and to faculty bodies questioning its decisions. But the actions taken by the NLU administration bear no resemblance to those described in the *Recommended Institutional Regulations*, which state that the “decision to discontinue formally a program or department of instruction will be based essentially upon educational considerations . . . [which] must reflect long-range judgments that the educational mission of the institution as a whole will be enhanced by the discontinuance.”<sup>4</sup> One might argue that the NLU administration's prioritization process, flawed though it was, confronted the virtual absence of majors in English, fine arts, mathematics, and natural sciences and could properly call for the elimination of degree programs in those departments. But the institution's educational mission was served by the members of these departments, who remained busily engaged in providing general education and service courses. The tenured faculty members whose appointments were terminated were not underworked.

Faculty members interviewed gave several examples of closures, mergers, and reorganizations of departments and programs at NLU over the previous

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3. Regulation 4c(1) of the *Recommended Institutional Regulations on Academic Freedom and Tenure*. A draft revision of the definition, currently published on the AAUP website with an invitation for comments, is “a severe financial crisis that threatens the academic mission of the institution as a whole.”

4. Regulation 4d(1) of the *Recommended Institutional Regulations*.

decades, none of which was accompanied by the termination of tenured faculty appointments. In 2012, a reorganization of the departmental structure in the College of Arts and Sciences might arguably have been justified, but the investigating committee found, as the faculty members interviewed believed, that the closing of four departments was a pretext, not a reason, for terminating the appointments of tenured faculty members. There was no acceptable financial or educational justification for these terminations.

### B. Alternative Placement

Regulation 4d of the *Recommended Institutional Regulations* states that “[b]efore 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,” providing, if necessary, “financial and other support for any required retraining.” The administration had no need to look beyond the courses already planned for the fall quarter to find “suitable positions,” and the affected faculty members needed no such retraining; they could have taught the same courses that they had taught successfully for many years. As a matter of fact, the administration solicited some of the laid-off faculty members to do just that—as adjunct instructors.

NLU, in its Faculty Policy 114, has what might appear to be a similar provision:

Affected Faculty Members will be offered placement into vacant full-time faculty positions within any College of NLU, if any such vacancies exist, and any newly created full-time faculty positions within any College of NLU, for which the Affected Faculty Members meet minimum qualifications and can perform essential functions. Such offers shall not require performance of a search.<sup>5</sup>

That same provision, however, contains the caveat that “[t]here shall be no obligation on the part of Senior Administration to create new full-time faculty positions upon the closure of a program, campus, or college.” The divergence from Association-approved policy is clear.

Some faculty members disputed the administration’s contention that the above-referenced NLU policy was inapplicable because it does not mention

*department* closures. The faculty members who took this position, including those serving on the faculty appeals committee, maintained that departmental structure is only an organizational convenience and that departments are routinely renamed, merged, or closed with no concomitant effect on faculty retention. The administration essentially took the alternative position: that departments are covered by the policy. Regardless of one’s position on this procedural point, the release of tenured faculty members who were qualified to teach available courses was a violation of Association-supported policy and of the commonly accepted understanding of tenure.

### C. Participation of the Faculty in the Decisions to Close Programs and Departments

The constitution and bylaws of the faculty association of National Louis University set forth the structure and procedures of the faculty association and of the faculty senate, the body by which the “legislative jurisdiction of the Faculty Association shall normally be exercised.”<sup>6</sup> The investigating committee, however, questions whether the proper balance of authority that is the hallmark of a genuine shared governance structure actually exists, because the bylaws further state that the “powers of the Faculty Association are delegated by the President of National Louis University” and the “actions of the Faculty Association and the Senate are subject to presidential veto.”<sup>7</sup>

Among the several standing committees established by this constitution is the Senate Academic Planning Committee, identified as “the institutional committee for academic planning,” with responsibilities, among others cited, to “exert leadership among the faculty in planning the academic future of the University” and to “establish guidelines for proposing new academic programs, presenting plans for enhancing already existing programs, and *discontinuing programs*” (emphasis added).<sup>8</sup>

The College of Arts and Sciences successfully used this policy in its January 2011 announcement of the elimination of the bachelor’s degree program in mathematics and quantitative studies, effective in fall 2011.<sup>9</sup> Approvals by the Senate Academic Planning Committee, the board of trustees, the faculty senate,

5. NLU FP114, III, B, 2, a.

6. Article II, section 1.

7. Article I, section 1.

8. Article V, section 9.

9. NLU Academic Alert #2011-03.

and the provost over the previous two months were all duly noted. The announcement gave low enrollment as the reason, and it noted that the elimination of the program “frees up mathematics faculty to devote more time and attention to offering supporting courses that students need to satisfy General Education requirements.” This suggests that NLU was able to follow its own policy and practice to close an under-enrolled program without laying off any members of the faculty.

But in 2012, the Senate Academic Planning Committee did not propose the discontinuance of programs. That proposal was developed through the so-called prioritization process, which created task forces populated by administrators and appointed faculty members and which followed guidelines and priorities not created or vetted by “the institutional committee for academic planning.” The faculty members serving on the task forces were told not to communicate with their colleagues. Faculty members informed the investigating committee that when the report of the academic task force came to the senate they were surprised to see that it recommended department closures. Although the senate passed the recommendations on, it explicitly stated that it could not “approve the findings individually for lack of adequate review.”

President Megahed’s April 17 letter to faculty and staff formally announcing the program and department closings cited a “shared governance review of all administrative functions and our academic portfolio” and claimed that “[i]n keeping with our shared governance approach, recommendations for program closure were supported by NLU’s Faculty Senate Academic Planning Committee and the full Senate.” The letter went on to state that “in accordance with our policies, program closures will involve the elimination of a limited number of faculty positions.” But members of the senate interviewed by the investigating committee disputed this linkage, noting the senate’s explicit affirmation that Faculty Policy 114 was the sole legitimate means for the termination without cause of tenured faculty appointments. Several subsequent meetings of the senate and of the faculty association produced a strongly worded letter to President Megahed and the chair of the board of trustees. The letter suggested that the action to terminate tenured faculty appointments did not adhere to university policies and was not in the best interest of students, and that the announced plan to develop a new general education curriculum was

“not consistent with the faculty’s primary jurisdiction over curriculum.”<sup>10</sup>

The investigating committee finds that the administration disregarded institutionally approved procedures for program review in favor of an ad hoc process of its own choosing. Deliberations were hurried and so “confidential” as to be invisible to much of the faculty. Perhaps members of the faculty were co-opted, or perhaps careless and overly trusting, during the prioritization process; but when they saw the results of that process, they spoke out clearly and expressed their strong objections. They were, however, ignored.

#### **D. Academic Due Process**

The Association’s policy for discontinuance of a program or department as set forth in the *Recommended Institutional Regulations* stipulates that any affected faculty member “may appeal a proposed relocation or termination resulting from a discontinuance and has a right to a full hearing before a faculty committee.” Such a hearing need not conform to all the requirements of a hearing in the case of dismissal for cause, “but the essentials of an on-the-record adjudicative hearing will be observed.” NLU’s policy on discontinuance, referenced above, has a separate, generic “Faculty Appeals Policy” (Faculty Policy 111), under which an appointed representative of the chief academic officer serves as a nonvoting member, the appealing faculty member has no right to appear before the committee, and the committee submits its report to the chief academic officer, who may concur or disagree before forwarding the report to the president.

Only two of the affected tenured faculty members chose to appeal. The unanimous recommendation of the appeals committee to reinstate them—and indeed all of the laid-off tenured faculty members—fell on deaf ears.

#### **E. Tenure**

National Louis University’s Faculty Policy 104 (“Awarding of Promotion and Tenure”), approved by the faculty senate and the board of trustees, “defines the criteria and procedures for initial assignment of rank, for promotion in rank, and for the awarding

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10. Memorandum of Faculty Concerns, June 4, 2012. This memorandum also noted faculty concerns about “the viability of tenure at National Louis University” and the apparent inequity of “the depth of the cuts on faculty when administration seems not to be affected.”

of tenure” for teaching faculty.<sup>11</sup> The introduction to this policy defines tenure as “continuing full-time employment with the University, subject to the University’s terms and conditions.” These terms and conditions, as fleshed out in considerable detail in this policy, are quite standard, requiring that candidates possess appropriate academic credentials and demonstrate performance in teaching, research, and service. The policy notes that the award of tenure is a “long-term institutional commitment” that “reflects a mutual expectation between the University and the faculty.”<sup>12</sup> Other university policies (on termination for cause and on closing of campuses, programs, and colleges) do not contradict this understanding of tenure.

In its unanimous support of the retention of Professor Gross, the Faculty Appeals Committee stated, “The replacement of a tenured faculty member with adjunct or nontenured faculty to teach the same or similar courses seems to us to be a clear violation of tenure.” The investigating committee concurs and finds that the wholesale terminations in 2012, following an ad hoc “prioritization” process, blatantly ignored existing policies. The right of the affected tenured faculty members to “continuing full-time employment with the University” was summarily denied.

The prioritization process focused on “flexibility” and “fiscal pressures,” with tenure apparently a final consideration, if it was considered at all. To the extent that participants in the process were following a model promoted by Dr. Dickeson, as the administration has stated, tenure was apparently a target rather than a protection.<sup>13</sup>

## VII. The Decimation of the Full-Time Faculty

Among the recent events at National Louis University, the investigating committee was particularly struck by how quickly and extensively competent and experienced members of the faculty, many of them with decades of service to the institution, were replaced by a cadre of part-time adjunct faculty members. Complete and accurate statistics regarding

faculty personnel at NLU were not readily available, but it appeared that when the 2010–11 academic year began, NLU had approximately 220 full-time faculty members. In spring 2011, in a round of terminations preceding those detailed in this report, fifteen full-time faculty members, none of whom had been granted tenure, lost their positions. In the spring 2012 round of terminations, sixty-three full-time faculty positions were terminated, including sixteen tenured faculty appointments and twelve full-time probationary appointments, which were not renewed. In addition, ten full-time faculty members in 2011, and another ten in 2012, took early retirement. The cumulative total of full-time faculty members who left or lost their positions over the two-year period was thus ninety-eight, and the investigating committee would guess that at most a handful of new full-time faculty members were brought on.

In sum, over two years the full-time NLU faculty shrank by nearly a half, and, with no comparable drastic shrinkage in student enrollment, adjunct faculty members (the investigating committee cannot guess at the number) have been engaged to fill the gap. The resulting change in academic programs in the arts and sciences that traditionally constitute the core of a college baccalaureate curriculum has been especially stark, with part-time adjunct faculty members now teaching almost the entire set of offerings.

The major dollar savings in faculty compensation was doubtless the chief factor motivating the NLU administration’s decision to drop full-time faculty members in favor of adjunct faculty members, since the latter reportedly receive an average of a little over \$2,000 per course and no fringe benefits. It can be assumed that the administration attached less importance to the negative impact of the change in the quality of education and would justify the low payment by referring to weaker academic credentials and no expectation of scholarship. The administration may also have seen that it was advantageous to have both the flexibility to add and drop teachers to meet instant needs and to retain teachers who are unlikely to risk their unprotected jobs by being troublesome over curricular or administrative matters.

From the standpoint of AAUP principles regarding academic freedom and governance, it can be argued that a department with a faculty consisting largely of adjunct faculty members is not worse off than one consisting of full-time faculty members with a tenure system that has in fact failed to protect

11. A separate policy covers the comparable issues for library faculty.

12. FP104, section V.

13. Provost Christine Quinn, in a YouTube video, “Christine, Kathy, and Walter,” posted January 31, 2012, explained that the process that NLU was following would use Robert Dickeson’s book *Prioritizing Academic Programs and Services: Reallocating Resources to Achieve Strategic Balance* as a model.

tenure and a system of governance in which the administration has been able to reject the decisions of formal faculty bodies. Still, the NLU administration has had to go through certain formalities in order to get around written requirements before it could act as it wishes, but where it has adjunct faculty members serving at its beck and call, it is unfettered in acting summarily. The climate for academic freedom under the current NLU administration may have been precarious for its full-time faculty, but for a faculty serving on part-time appointments, the climate in all likelihood will be lethal.<sup>14</sup>

### VIII. Conclusions

1. The administration of National Louis University, in discontinuing fourteen degree and certificate programs and four College of Arts and Sciences departments and in terminating the appointments of more than sixty faculty members, acted in violation of the 1940 *Statement of Principles on Academic Freedom and Tenure* and derivative Association-supported standards. Some of its actions also disregarded stated university policies and past practice.
2. The administration did not attribute its actions to financial exigency and did not attempt to demonstrate that the university in spring 2012 was in financial straits so dire as to require termination of full-time faculty appointments.
3. The courses taught by the faculty members with terminated appointments by and large have continued to be taught, but by adjunct faculty members who serve at will and receive a small fraction of the compensation paid to the full-time faculty members they have replaced. The administration retained a few of the senior faculty members on an adjunct basis after their appointments were terminated, thus violating their tenure rights regarding procedural safeguards and continued compensation.
4. The administration concealed from responsible faculty bodies its intent in the evaluation of programs to terminate faculty appointments, and it ignored faculty objections once the decisions on termination became known. The role the administration afforded the faculty before, during,

and after the decisions on program discontinuance and appointment termination was grossly inadequate.

5. The climate for academic freedom under the current administration of National Louis University, especially in its College of Arts and Sciences following the release of scores of experienced full-time faculty members and their replacement by adjunct faculty members serving at will, is precarious at best. ■

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#### *Investigating Committee*

Committee A on Academic Freedom and Tenure has by vote authorized publication of this report on the AAUP website and in the *Bulletin of the American Association of University Professors*.

Chair: **HENRY REICHMAN** (History), California State University, East Bay

Members: **ERNST BENJAMIN** (Political Science), Silver Spring, MD; **MICHAEL BÉRUBÉ** (English), Pennsylvania State University; **DON M. ERON** (Writing and Rhetoric), University of Colorado; **MARJORIE HEINS** (Communications), New York University; **RISA L. LIEBERWITZ** (Law), Cornell University; **DEBRA NAILS** (Philosophy), Michigan State University; **CARY R. NELSON** (English), University of Illinois at Urbana-Champaign; **JOAN WALLACH SCOTT** (History), Institute for Advanced Study; **HANS-JOERG TIEDE** (Computer Science), Illinois Wesleyan University; **THERESA CHMARA** (Law), Arlington, VA, *ex officio*; **RUDY FICHTENBAUM** (Economics), Wright State University, *ex officio*; **JOAN E. BERTIN** (Public Health), Columbia University, *consultant*; **ROBERT A. GORMAN** (Law), University of Pennsylvania, *consultant*.

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14. In December 2012, the Higher Learning Commission of the North Central Association, whether it knew of these developments or not, reaffirmed NLU's accreditation until its next reaffirmation review in 2019–20.