TO: The Faculty Hearing Committee of Emory University  
Prof. James Hughes, Chair  
RE: Forced Reassignments and Non-Renewal of Contracts  
DATE: April 25, 2013

We, the undersigned, hereby file an appeal concerning the departmental reassignments of tenured and tenure track faculty (TTF) and announced non-renewal of Lecture Track Faculty (LTF) that have resulted from the programmatic cuts and closures unveiled on September 14, 2012. In the appeal below, we argue that these cuts are the product of improper administration, and that our reassignments and non-renewals violate Section 3.1 and Section 3.2.1 Paragraphs 14 and 15 of the Emory College Statement of Principles Governing Faculty Relationships (the Grey Book). Given these violations, we ask that the Faculty Hearing Committee, upon consideration, recommend that our reassignments and non-renewals be voided and halted immediately.

Failure to Establish Cause, Extraordinary Circumstances, or Utmost Necessity

Section 3.2.1 Paragraph 13 of the Grey Book states in its entirety:

The Faculty Hearing Committee shall conduct hearings, make findings of fact, and make recommendations to appropriate university officers when a faculty member’s employment is or may be suspended, transferred or terminated for any reason specified in Paragraph 12(c) above or Paragraph 14 below. When a faculty member seeks review for a reason listed under paragraph 14 below, the jurisdiction of the Faculty Hearing Committee shall be limited to whether the individual faculty member has been treated in a manner that is arbitrary or capricious and shall not extend to an inquiry into the propriety of any action by the board of Trustees under paragraph 14(a) or (c) or of the president under paragraph 14(b).

Paragraph 12(c) does not apply in this situation. It refers to termination “for one or more of the following reasons: moral delinquency, neglect of academic duty, incompetence, permanent physical or mental incapacity, or other such adequate cause.” We are neither being terminated—the distinction between termination and non-renewal is described below—nor has any applicable cause been cited for our reassignments and non-renewals. This provision therefore has no bearing on our situation.

Paragraph 14, however, is directly on point. It states:

Nothing in the provisions set forth above shall be interpreted as restricting:

(a) The right of the Board of Trustees under extraordinary circumstances to discontinue any academic program of the University.

(b) The right of the President, after conference with the appropriate Dean and departmental chairs, to assign any faculty member to any appropriate position, provided no such assignment shall carry with it reduction in rank or change of status as to tenure.

(c) The right of the Board of Trustees to reduce the salaries of members of the faculty as financial exigencies may demand.

Paragraph 15 elaborates on the right of the Board of Trustees to exercise the rights named in Paragraph 14. It states:

It is the express desire and purpose of the President and the Board of Trustees to use the powers expressly reserved ([in] Paragraph 14 above) only in cases of the utmost necessity, when failure to use such powers might adversely affect the interest of the University.

The University’s right to discontinue programs, in other words, is not unqualified. It is a right to be exercised rarely, sparingly and only when absolutely necessary. The most obvious case of “extraordinary circumstances” is financial exigency. We stress that neither the Board nor the administration have ever cited “extraordinary circumstances” or “utmost necessity” in justifying the proposed cuts. In fact, just the...
opposite is true. Dean Forman has stated on multiple occasions that the cuts were not undertaken for financial reasons.

*On September 6, 2012 Dean Forman told GovCom that the program eliminations were “not driven by financial crisis” but by “strategic considerations.” He added that “the budget looks better this year.”

* A week later, in announcing the cuts, Dean Forman wrote: “While our financial challenges add urgency to these decisions, these are fundamentally academic decisions.”

Nor has the Dean made the case that his academic ambitions for the College—“building and enhancing areas of true eminence”—stem from a crisis of diminishing institutional stature or academic integrity or “extraordinary circumstances” of some other, non-fiscal sort. On the contrary, he has repeatedly stated that Emory’s achievements and stature are rising due to the many accomplishments of its faculty.

Simply put, by Dean Forman’s own accounts, program elimination was elective and not forced by extraordinary circumstances, fiscal or otherwise. As such, the announced reassignments and non-renewals—like the cuts and closures themselves—stand in direct violation of the “extraordinary circumstances” and “utmost necessity” clause of Paragraphs 14 and 15 of the Grey Book. We request that, upon consideration, the Faculty Hearing Committee recommend that they be declared void and that they be halted immediately.

**Arbitrary and Capricious Decisions**

The reassignments and non-renewals in question derive entirely from a process that violated University Bylaws, College Bylaws and the Grey Book in an arbitrary and capricious manner. These violations are detailed in a grievance filed with the Emory College Grievance Committee. The following is a summary of the violations outlined in that grievance.

1. Article IV, Section 1 of the Emory University Bylaws states: “Responsibility for the instructional programs of the University shall be vested in the University Faculty under the direction of the President. . . . [T]he faculty of any school or college shall have jurisdiction over the educational program and the internal affairs of that division, instruction, schedules, and degree requirements.” By engineering a secretive process for academic reorganization, the conclusions of which were then imposed unilaterally on the College, the administration violated the faculty’s primary responsibility for curriculum.

2. Article V, Section 1 of the Emory College Faculty Bylaws defines the function of the Governance Committee (GovCom) in a simple sentence: “The Governance Committee represents the Emory College Faculty.” In pursuing programmatic cuts, the administration worked closely with a subcommittee of GovCom, the College Financial Advisory Committee (CFAC). CFAC repeatedly failed to give GovCom timely and accurate reports of its activities. That failure to report undermined GovCom’s ability to fulfill its responsibility to represent the faculty in matters of faculty governance and curriculum oversight.

3. Under Article V, Section 1 (a) of the Emory College Faculty Bylaws, the Dean is required to “consult with the Governance Committee on all matters pertaining to the College and to the Faculty of the College. This consultation shall include but not be limited to proposals for the development and modification of College programs and the setting of priorities and goals for the College.” GovCom’s minutes make clear that in violation of this provision, the Dean did not “consult” with GovCom about the proposed cuts. Rather, he informed GovCom after the fact of decisions he had already made. We contend that at the very least, proper consultation would have involved an unambiguous request that GovCom explicitly authorize CFAC to evaluate programs and curricula for possible elimination. There is no available evidence that such authorization was ever requested or granted. Instead, CFAC undertook such work in secret and without legitimate GovCom oversight.

4. Article V, Section 1 (a) of the Emory College Faculty Bylaws states that GovCom “shall have access to information necessary to conduct studies and to make recommendations to the Administration” related to setting priorities for the College and changes of College programs. In violation of this requirement, the administration made a variety of data and information available to CFAC that was not made available to
GovCom as a whole. GovCom’s right to information continues to be violated by CFAC’s refusal to release its minutes to GovCom, despite explicit requests from the faculty.

5. The Emory College Faculty Bylaws establishes two Standing Committees whose purpose is precisely to ensure the integrity of the curriculum of the College. Article V, Section 2 (g) calls for the Curriculum committee to “study and make recommendations to the faculty concerning the curriculum of Emory College,” and calls for the Educational Policy Committee to “engage in a continuing re-study of the Emory curriculum with the purpose of making proposals and recommendations to the entire faculty, to divisions, to departments and to interdepartmental groups as to new educational possibilities.” The administration failed to consult either of these Standing Committees at any point in the process of determining cuts to programs and curricula.

6. The Laney Graduate School’s Governance Document states that “The Laney Graduate School Executive Council and Dean will jointly decide matters concerning: Approval of new programs and courses; Maintaining, revising, and implementing common standards of quality for instruction and student research in the Laney Graduate School; Evaluating priorities in allocating stipend and tuition budget funds; Program development and planning for the Laney Graduate School over multiple years.” In violation of the Governance Document, the Laney administration did not consult the Executive Council prior to approving the cuts. Likewise, it failed to consult the Directors of Graduate Study and the Laney Appointments Committee. Instead the Laney administration relied on the secretive work of a subcommittee in another unit of the university, the CFAC of Emory College, to determine curricular changes in the Laney Graduate School.

The transfers of our appointments to new departments and non-renewal of our contracts owe entirely to these illegitimate, arbitrary and capricious decisions and actions. No other process of academic reorganization accounts for them. They have been imposed on us as part of the prerogative that the administration has claimed for itself in determining and then executing the cuts. We believe that these multiple Bylaws violations establish the illegitimacy of the cuts announced on September 14, 2012. Our grievance with the Emory College Grievance Committee requests that the cuts be declared null and void on the basis of these violations.

Academic Freedom

Section 3.1 of the Grey Book expresses a commitment to support “academic freedom and tenure, and agreement of procedures to assure them.” It adds: “[F]or maximum effectiveness faculty members should have security adequate for freedom to teach and to seek truth.” Members of the faculty are “assured of reasonable protection against arbitrary pressures and procedures; and the institution, students, and the general public are assured of reasonable protection against incompetence and irresponsible utterance.” We contend that the secretive processes that the administration used in determining the cuts, and the forced transfers of our appointments and non-renewals of our contracts that have ensued, violate academic freedom itself. Neither individual faculty members nor the chairs of the targeted departments were consulted in discussions about program elimination, and there was no consensual process in which departments were warned in advance of purported underperformance. On the contrary, every cut department was praised in its planning sessions with the College Office in the years preceding the announced eliminations.

In our view, the elimination of our programs, the dismantling of our curricula, and the loss of students coincident with our forced transfers to other departments and non- renewal of our contracts all violate our freedom to teach and what the Grey Book affirms as faculty’s right to “the free search for truth and its free exposition.”

Issues Specific to Lecturer Track Faculty

Item 8 of the Grey Book states that the Dean “shall have conferred regarding any recommendation for . . . nonrenewal of a limited appointment with members of the department or faculty concerned, according to
procedures, which shall have been previously established and communicated to the faculty.” The administration violated this policy in three distinct ways.

1. The Dean did not confer with the departments, programs or faculty concerned, as required. Rather, the Dean informed chairs of affected departments and programs after the fact that the contracts would not be renewed and declared his decision “final.” The chairs and directors of the targeted departments confirm that the Dean did not confer with them concerning the academic judgments involved in determining the cuts, or the impact of the cuts on the contracts of lecturer track faculty specifically. In short, the consultation required by the Grey Book did not take place.

2. The “procedures” for the proposed non-renewals were neither established nor communicated to the faculty prior to their implementation, as the Grey Book requires. Instead, the Dean has made clear that he made the decision to close various units of the University in consultation with the College Financial Advisory Committee (CFAC), an unelected and unrepresentative body that reported only to the Dean. As such, and as detailed in a grievance filed with the College Grievance Committee, the process leading to the proposed cuts violated the University and College Bylaws, as well as the Grey Book. For purposes of this appeal, the relevant fact is that in making those decisions the Dean violated the Grey Book’s requirement that the procedures for the proposed non-renewals be established in advance and communicated to the faculty.

3. There was no formal “recommendation” that our contracts not be renewed, as the Grey Book requires. Rather, as noted above, the Dean, in consultation with CFAC, made a decision to shut various units of the University. We were subsequently informed that our contracts would not be renewed. A recommendation, in its plain sense, is advice concerning a choice to be made by another party. The non-renewals of LTF contracts were proclamations handed down by the College Office, dictates to be followed rather than recommendations to be considered.

Further, the administration cannot legitimately claim that its decision not to renew LTF contracts is justified under the provisions of the document Appointment and Review of Lecture-Track Faculty (ARLTF). Item 6.a. of that document states: “Renewal of LTF appointments depends not only on meritorious teaching and service, but also on continued departmental need for the faculty member's services.”

1. At no time has the administration asserted that our teaching and services was anything less than meritorious. In fact, in his letter to the Chair of the Journalism Program announcing the decision to close the Program, Dean Forman wrote, “This decision in no way diminishes the great respect I have for your work and that of your colleagues.”

2. Our programs and departments did not decide they no longer needed for our services. Rather, the Dean made a unilateral decision to cut our programs and departments. In doing so, as detailed in the grievance filed with the Grievance Committee, the Dean violated the College and University Bylaws as well as the Grey Book by attempting to impose academic decisions that are rightly within the jurisdiction of the faculty.

Item 6.a. of the ARLTF goes on to state that “Timely notice of non-reappointment (as specified below in section 7) may be given to any LTF in accordance with changes in the department, program or center's academic personnel needs as well as for other reasons specified in the Statement of Principles Governing Faculty Relationships [the Grey Book].” While we make no claim in this appeal that the University has failed to give timely notice of the proposed non-renewals, we do claim that the process leading to the proposed cuts violated the College and University Bylaws as well as the Grey Book, as described above, such that the non-renewals resulting from those decisions are illegitimate.

The administration likewise cannot turn to the Item 9, the “Termination” provision of the ARLTF to justify the proposed non-renewal of our contracts. Item 9 of the ARLTF states in its entirety:

The Dean, after consultation with the department chair, may terminate an appointment before its completion on the following bases: for cause, as defined in Paragraph 12 of the Statement of Principles Governing Faculty Relationships; due to significant reorganization, reduction or elimination of a program; or where specifically authorized by the Board of Trustees.
However, because termination happens in the middle of a contract and non-renewal happens at the end, LTF are not being “terminated.” Rather, our contracts are not being renewed. On these grounds alone the termination provision does not apply. Beyond this, once again, no cause as described in Paragraph 12 has been cited for the non-renewal of LTF, and as the programmatic discontinuation was undertaken in violation of the University and College Bylaws, as outlined above and in the grievance filed with the Grievance Committee. Regardless, the Dean did not consult with departments and programs, as required in Item 9, much as conferral is mandated by the Grey Book.

Issues Specific to Tenure Track Faculty

Beyond the issue of forced reassignment of tenured faculty, in light of the violations of the Grey Book described in this document, and as part of the recommendation to void the forced reassignments of tenured faculty, we urge the Faculty Hearing Committee to affirm that the reassignment owing to closure of departments does not suggest the administration has a right to dismiss tenured faculty in those discontinued programs solely on the basis of closure. The closure of programs is not one of the conditions under which a tenured faculty member can be terminated under terms of the Grey Book.

*According to Paragraph 12, there are only three conditions under which tenured faculty may be dismissed: resignation, retirement, or cause. The latter, as written, pertains to individual conduct and competency, and not to collective dismissal resulting from program discontinuation.

*Paragraph 14 protects the right of the Board under extraordinary circumstances to discontinue academic programs, and then moves to protect the right of the President to reassign faculty; however, it does not name as a protected right the prerogative of either the Board or the President to dismiss tenured faculty in the event of program discontinuation.

*Paragraph 16 pertains to the fiscal obligations of the university to “[a] faculty member on continuous appointment, whose appointment is terminated on the initiative of the university for reasons not involving moral delinquency...” (emphasis added). The italicized clause, on its face, refers only to terminations of tenured faculty not for cause, i.e. cases of resignation or retirement. Like Paragraphs 12 and 14, this clause does not name or imply closure of departments as grounds for termination of tenured faculty.

As such, we urge the Faculty Hearing Committee to confirm that the Grey Book makes no provision for dismissal of tenured or tenure track faculty purely on the basis of departmental closures or program discontinuation.

Petition

For all of the reasons listed above, we ask the following:

1. That the Faculty Hearing Committee exercise its responsibility under the Grey Book and recommend that our forced reassignments and non-renewals be declared invalid, null and void, and that they be halted immediately.

2. That, in keeping with the Grey Book’s call for the Faculty Hearing Committee to make its recommendations to “appropriate university officers,” and whereas Dean Forman was directly involved in these matters, the Committee file its recommendation with Provost Claire Sterk.

3. That the Faculty Hearing Committee act on this appeal in a timely manner and submit its recommendation before the close of the Spring 2013 semester.

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