



To: Kevin Wildes, S.J., President and Ed Kvet, Provost
From: AAUP Chapter, Loyola University New Orleans
Date: March 5, 2009

Re: Motion for Summary Judgment against Ken Messa, Ph.D.

Gentlemen,

By this letter, we note inaccuracies and misrepresentations contained in a document that has circulated among the faculty recently. This document, the motion for summary judgment from attorneys representing current and former Loyola administrators against Ken Messa in his lawsuit for breach of contract, distorts the facts by taking statements made by current faculty members during depositions out of context and by recasting events in ways that radically change their implications. We are also concerned that statements in this document inaccurately portray tenure as a lifetime contract that is unenforceable under Louisiana state law. Because this motion is severely flawed and only serves to prolong the conflict between Loyola administrators and faculty, we respectfully request that you direct your attorneys to withdraw this motion.

The following paragraphs give details of specific factual errors contained in the document.

The motion for summary judgment claims that all steps outlined in the Faculty Handbook, section 9.E.1 were followed. In support of these claims they make the following statements:

- 1) The senate's role on the review criteria was merely to agree with the SCAP proposed criteria. In passing a motion to accept a report that contained no disagreement with the criteria, the Senate fulfilled its duty.
- 2) Further, the senate expressed no disagreement with the SCAP report on the Pathways Plan, indicating that the Senate believed SCAP fulfilled its duties as prescribed in 9.E.1.

In fact, both the criteria and the SCAP reports were "accepted" by the Senate at its meeting of April 20th, 2006. As a rule, the Senate may not act on an item of new business until the following meeting unless a motion is passed to suspend the rules to allow a vote to be taken immediately. No motions with respect to this new business, either to suspend the rules or to vote in any way on the newly presented documents, were made at the April 20th meeting.

However, on that same date the Senate did pass a motion of no confidence in the process that produced the Pathways Plan. This motion was approved almost unanimously, with only two abstentions. In this context, it is clear that “accepting” reports does not imply agreement with their content or with the process that produced them but, rather, is just a way to note that such documents have been received.

The attorneys also used part of Dr. Calzada’s testimony, taken out of context, to support their claim that the university did not breach Dr. Messa’s contract. In fact, Dr. Calzada testified specifically that the University Rank and Tenure Committee, which she chaired at the time, found that the administration did breach the contracts of Dr. Messa, Dr. Hammel and the other plaintiffs. Later in her deposition, Mr. Schafer, attorney for Dr. William Hammel, asked Dr. Calzada to clarify her testimony:

Q. Dr. Calzada, counsel asked you whether SCAP and the Senate breached any duty that it had to the terminated professors. Do you remember that?

A. Yes, I remember the question.

Q. I think your answer was, no, was it not?

A. That's right.

Q. As a member of the URTC, did you find that the administration breached the contract it had with Dr. Hammel?

A. Yes.

...

Q. And the same thing for Dr. Messa?

A. Yes.¹

Furthermore, the attorneys who are defending Loyola administrators have used Section 9.E.1. of the Faculty Handbook to justify the actions of the administration. That part of the Handbook reads:

A proposal to discontinue a program or department of instruction will be evaluated by the Standing Council for Academic Planning, which will apply the criteria established by the University Senate. The Standing Council for Academic Planning will advise, in writing, the Board of Trustees, the President, and the University Senate concerning the proposed discontinuance. Final decision on program discontinuances is made by the Board.

They claim that even though there was disagreement with Pathways, the Board had full authority to approve the plan. A complete understanding of the consequences of the Board’s final decision appears at the end of this section in paragraph 9.E.3, which reads:

A faculty member may appeal a proposed relocation or termination resulting from a discontinuance and has the right to a full hearing before the University Rank and Tenure Committee in which the essentials of an on-the-record adjudicative hearing are observed. The issues in this hearing will include the question of the University’s failure to satisfy any of the conditions of this section. In such a hearing the determination by the Standing Council for Academic Planning 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.

¹ Maria Calzada’s Deposition taken on September 29, 2008, pages 201-202.

Clearly the Faculty Handbook underlines the importance of the input of the Standing Council on Academic Planning on any final decision made by the Board. We must stress that the Standing Council for Academic Planning recommended the continuation of the Computer Science program, and thus the continuation of Dr. Messa's tenured appointment. As the administration presented no proof in support of the Board's decision to terminate Computer Science nor in support of any efforts to place Dr. Messa in other suitable position, it is of no surprise that the University Rank and Tenure Committee found that the administration had terminated Dr. Messa in violation of the Faculty Handbook.

In closing, we reiterate our request for you to have the motion for summary judgment against Ken Messa withdrawn. We also request clarification on your position regarding the tenured status of faculty members at Loyola University New Orleans.

Respectfully submitted,
AAUP Chapter, Loyola University New Orleans