



April 5, 2019

Anita Levy, Ph.D.
Senior Program Officer
American Association of University Professors
1133 19th Street, NW
Suite 200
Washington, DC 20036

Re: Vermont Law School – Supplemental Response to Draft AAUP Report

Dear Ms. Levy:

This supplemental response is provided by Vermont Law School (VLS or the School) to the draft report (Report) of the American Association of University of Professors (AAUP) investigation committee (Committee) entitled "College and University Governance: Vermont Law School," received March 24, 2019.

This supplemental response summarizes the position of VLS, is not confidential and is provided for purposes of inclusion in the Report in its entirety as a footnote, as you requested. This supplemental response does not replace or supersede the detailed 16-page response and accompanying attachments previously provided to the AAUP by letter dated March 31, 2019. We expect that the AAUP and the Committee will correct the significant errors and omissions in the Report we have brought to your attention in both of our responses.

Executive Summary

Any suggestion that Vermont Law School engaged in reduction of its instructional budget, including restructuring faculty positions in the spring of 2018, without ongoing, extensive, and continuous involvement of the faculty is inaccurate. When a condition of financial exigency was identified, and it became clear that the survival of the School was at stake, the administration explored, together with the faculty, all realistic alternatives to involuntary reductions in faculty positions, while at the same time preserving its premier environmental program. The AAUP Report does not identify a single viable alternative that was presented to the administration by the faculty, or suggest one on its own. To the extent that the Report notes lack of involvement by some portion of the tenured faculty, the Report fails to highlight the administration's continued solicitation of input from the faculty, and the extent to which some faculty were not willing or did not choose to participate.

History

What really happened at Vermont Law School, as explained to the AAUP Committee in person on December 19, 2018, documented in a timeline, response to questions and documentation provided to the AAUP Committee on February 4, 2019, and further documented in a 16-page response and accompanying attachments provided to the AAUP by letter dated March 31, 2019, is the following:

The financial challenges of a private independent law school with a small endowment caught up with VLS in the fall of 2017. Enrollment and discount rates did not meet projections, strategic initiatives did not generate adequate anticipated revenue and the School could no longer sustain the deficit spending it had incurred annually for the past six years. Despite significant success in increasing enrollment, starting new programs, including nationally recognized online courses, and renegotiating debt service, the School's reserves were significantly depleted and another year of deficit spending at that level could have forced the School's closure. Most challenging was the projected deficit of more than \$2 million for FY19, and the years following. Audited financial information fully documenting the finances has been provided to the AAUP, and has not been contravened.

Immediate action was necessary to place the School on a sustainable path and preserve and grow its renowned environmental program. Over seven months, from the October 2018 Board of Trustees meeting through the May 2019 Board meeting and Commencement, the Board, its Budget & Finance Committee, the School's senior leadership team consisting of five faculty members and four administrators, the staff and, most importantly, its faculty and especially its elected Dean's Advisory Committee, met, conferred, discussed and reviewed numerous options to address the financial challenges and ensure the survival of the School. All suggestions were solicited, and no option was left unexamined. Lacking the support of a larger university to rely on for funding, the School explored partnerships with other schools, including the University of Vermont, solicited donors for contributions, and explored funding from the State of Vermont -- all without success.

In February 2018, the Board passed a resolution requiring a balanced budget while also requiring the maintenance of educational quality and the School's premier environmental program. As the School had already reduced expenses in all other areas, the instructional budget would have to be reduced. At this time, the School was carrying a faculty more than twice as large as the faculty at many similarly-sized law schools. The administration approached the faculty, both collectively and individually, about voluntary restructuring. Very few faculty were willing to participate voluntarily in salary reductions or position changes to allow the School to close the budget gap, despite the obvious conclusion that the failure of a voluntary approach ensured that involuntary action would have to be taken. It was abundantly clear that if viable alternatives were not identified, involuntary reductions to the instructional budget would have to be made.

Having exhausted all other options, the School took action in the form of a programmatic restructuring that has resulted in a close-to-balanced budget in FY19 and a projected balanced budget for FY20. We acknowledge that this process was, although necessary, a deeply painful experience the School hopes never to repeat.

The Faculty Were Informed and Meaningfully Engaged Throughout

VLS provided the AAUP Committee with detailed information on the extensive measures taken to solicit the views and suggestions of the faculty, as well as the engagement of the Dean's Advisory Committee. The financial issues and proposed solutions were discussed in regular faculty meetings, special faculty meetings, and in the Dean's Advisory Committee open meetings with the faculty (the administration was present on an invitation-only basis to provide information). The administration presented various options to the faculty as a whole in these meetings, including projections detailing salary reductions and reductions in the number of faculty. Documents provided to the Committee demonstrate that a variety of options were presented and that responses and suggestions were solicited. The administration cannot be faulted because some faculty failed to engage in governance – that was their choice – as best evidenced by the fact that only one tenured faculty chose to serve on the Dean's Advisory Committee.

Once the magnitude of the needed budget cuts was clear and the Board of Trustees adopted the resolution for a balanced budget in early February 2018, the faculty was presented with several options for achieving the necessary budget cuts, which included an across-the-board salary decrease, voluntary changes in status leading to major reductions in the number of FTEs, or some combination thereof. It was obvious that insufficient acceptance of voluntary reductions, would have to lead to involuntary reductions to the instructional budget, including involuntary separations. The Report acknowledges the “writing was on the wall,” particularly after the Board's mandate, announced in mid-February, that the budget be balanced for FY19.

VLS's Financial Situation Was Dire, Required Action and a Measure of Flexibility

VLS's extreme financial circumstances did not afford it the luxury of drawn-out decision-making or more generous severance offers than those provided to restructured faculty. It was essential to take prompt action and to tailor flexible solutions suited to VLS's particular circumstances. All reasonable alternatives were explored, as evidenced by the Report's failure to identify -- after extensive investigation, interviews, and review of audited financial information -- any other viable solutions.

The Report suggests that individual faculty proposed solutions to the administration that were never acknowledged or acted upon. However, the Report provides no indication of what those overlooked ideas were or might have been, as the administration afforded numerous opportunities to faculty to offer suggestions and proposals. Nor does the Report discuss whether any of these suggestions was even marginally realistic. The administration and the faculty-elected Dean's Advisory Committee eagerly solicited and considered every possible option short of involuntary restructuring, as the documentation provided to the Committee demonstrates.

The Restructuring Applied to All Faculty

The Report narrow focus on tenured faculty fails to acknowledge that the restructuring applied to all faculty at VLS: short and long-term contract faculty, grant-funded faculty, and clinical faculty as well as tenured. More than three quarters of the faculty of 60 were affected and administrator

salaries were reduced, some by as much as 20%, and the Dean's salary was reduced by 25%. Half-year severance payments were offered and as much flexibility as possible was provided to restructured faculty, many of whom are still teaching at the School.

At the time of the restructuring, there were approximately 60 faculty, less than one-third of whom were tenured. The other two-thirds of the faculty, as the Report correctly points out, were granted committee and other significant leadership and administrative roles in running the School. More than 50 of the 60 faculty – 80% -- were impacted by the restructuring in position or salary or both.

VLS Has Maintained Its Environmental Program

VLS prioritized and maintained its flagship environmental program, which has been reinforced and certainly not diminished. Post-restructuring, VLS is offering essentially the same set of environmental law courses and will increase the number of environmental courses in the coming academic year. Its environmental offerings are the most comprehensive in the country, and will continue as such under the very capable leadership of its Environmental Law Center Director, Jennifer Rushlow.

VLS Has a Lean Administrative Team and Structure

The Report incorrectly states that VLS is top heavy with administrators. VLS in fact has a very lean administrative management team. Five of the administrators are full-time faculty (two Vice-Deans, two Associate Deans and the ELC Director) who carry a half or greater than half teaching load. One administrator (the Dean) is also teaching two classes this year. Two of these deans run academic centers in addition to their teaching and administrative responsibilities. The remaining four administrators are the vice presidents for fundraising and alumni affairs, marketing and admissions, the director of human resources, and chief financial officer. These are essential positions and functions often assumed by or run out of a central university, a resource unavailable to VLS or other independent law schools.

Two additional facts are important to stress. First, without a university to provide student services, the law school administration must provide all of the disability accommodation, counseling, and other student services usually provided by a central administration. Second, VLS is more than a JD granting law school. It offers numerous LLM degrees (environmental law, food and agriculture law and policy, energy regulation and law, and American legal studies) and four master's degrees (environmental law, food and agriculture law and policy, energy regulation, and restorative justice) and an accelerated JD program and numerous online course offerings.

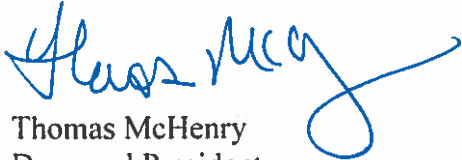
The Board of Trustees was Actively Engaged

The Board Budget & Finance Committee met monthly, reviewed detailed financial information and explored a variety of financial and budgeting options, which led to the Board's February 2018 mandate for preparation of a balanced budget and sustainable financial model, its approval of the restructuring plan in May 2018, and adoption of the revised budget in late June 2018.

It is unfortunate that the Committee, and/or the AAUP, has chosen to further the personal agendas of a small minority of previously tenured faculty as part of a collective effort to protect tenure nationally, instead of focusing on the unique and compelling circumstances facing VLS in the FY18 academic year. In doing so, the AAUP is doing a disservice to higher education, by suggesting that even a thoughtful, deliberate and consultative programmatic restructuring process in an institution in financial exigency is improper. If the AAUP “want [s] to see VLS survive” as its Report states, it will tell the whole story, accurately and fully.

As before, if you have any questions or you would like any further documentation, please do not hesitate to contact me.

Sincerely,



Thomas McHenry
Dean and President
Vermont Law School

cc:

Emily Hough
Deanna Wood
Susan Jarosi