

April 20, 2020

Jacob Kogan, Ph.D.
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Office of the President

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Via Federal Express and Email (kogan@umbc.edu; mathumbc@yahoo.com)

Re: Notice of Termination

Dear Dr. Kogan:

I have received from Dr. Philip Rous, UMBC Provost and Senior Vice President for Academic Affairs, his concurring memorandum supporting Dean LaCourse's recommendation that your appointment at UMBC be terminated. I have reviewed the documents material to this matter, and I concur with the Provost's recommendation. The evidence in the record supports the finding that you have engaged in professional misconduct and willful neglect of duty.

Based on the evidence available, and for the reasons set forth in this letter, your appointment is terminated effective thirty (30) days from the date of this notice, or upon the conclusion of proceedings set forth under University System of Maryland Policy on Appointment, Rank, and Tenure of Faculty, [Policy II-1.00](#) I.C.7(a). See Exhibit 1.

Performance and Misconduct Issues Documented

The following sections provide the applicable categories for dismissal associated with your conduct and the details of that conduct.

Professional Misconduct and Willful Neglect

Willful failure to provide authorized accommodations pursuant to the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973 (Section 504); deliberate refusal to abide by the directives of your department chair and college dean to provide the authorized accommodations; steadfast refusal to follow federal law including the ADA and Section 504; denying students their civil rights by refusing to provide the authorized, verified, and reasonable accommodations to two students who had been verified as qualified individuals with disabilities needing the identified accommodations; and putting student academic performance in jeopardy through deliberate refusal to provide for legally mandated accommodations.

On February 4 and February 21, 2020 respectively, you were sent letters via email from the Office for Student Disabilities Services (SDS) concerning two students in your Math 221 class (See Exhibits 2 and 3). These two letters provided you notice that the respective students had received authorized accommodations that provided for, among other things, makeup tests due to disability related complications. Both letters referenced Section 504 of the Rehabilitation Act (Section 504) and the

Americans with Disabilities Act (ADA). In your email of April 14, 2020 to Matthias Gobbert (with copies sent to the Dean, Provost, Assistant Vice Provost for Accessibility & Disability Services, and the Mathematics and Statistics department faculty), you acknowledged receipt of these letters. See Exhibit 4.

After receiving the SDS notice letters, you then received requests from each of these two students for makeup tests due to their disabilities related complications. The students received no response from you, but you admit denying those requests in Exhibit 4.

On March 4, 2020, Michael Canale of SDS sent an email to you requesting that you make arrangements for one of those students, confirming that the student had approved accommodations to receive makeup tests due to disability related complications (see Exhibit 5). You did not respond to Mr. Canale.

On March 13, 2020, Mr. Canale wrote to you stating that he had sent three emails to you about two students who have authorized accommodations to make up tests, but you had not provided these makeup tests (see Exhibit 6).

Ten days later, on March 23, 2020, you responded to Mr. Canale (see Exhibit 7), informing him that you would not provide the makeup tests because you did not consider the situations to be covered under UMBC's Makeup Exam policy which did not mention this type of makeup test.

Mr. Canale responded to you that same day, March 23, 2020, citing the University's responsibilities under the Americans with Disabilities Act (ADA) and Section 504, and affirming the approved accommodations (see Exhibit 7). You did not respond, nor did you take any action to contact the affected students.

On March 25, 2020, Dr. Animikh Biswas, your department chair, sent you an email directing you to provide the approved accommodation makeup tests for the two students, citing Section 504 as authority. On April 1, 2020, after not receiving a response from you, Dr. Biswas wrote to you again, giving you a deadline of April 3, 2020 to comply. In both his March 25th and April 1st messages to you he advised you that *your failure to carry out your responsibilities to provide the makeup tests could lead to disciplinary action*. See Exhibit 8.

On Friday, April 3, 2020 at 2:35p.m., you wrote to Dr. Biswas (see Exhibit 9), asking what is meant by Section 504, writing in part-

It would be great if you could specify what exactly do you mean by "504 disability accommodations." I am confident this material will be of interest to many faculty.

I appreciate your rapid response.

With no compliant action evident in your communications to the Chair, Dean William LaCourse wrote directly to you on April 8, 2020, explaining the basis of Section 504, providing the U.S. Code citation and the cite for the implementing federal regulations. He explained that federal law would take precedence over any UMBC policy that may govern or fail to cover the type of makeup exam authorized under the circumstances. He also noted that your request for the meaning of Section 504 disability accommodations comes in the face of your receipt of no less than 38 written accommodation authorizations sent to you by the SDS office just since the fall semester of 2016. Each one of these letters referenced Section 504 and the ADA. Considering the numerous requests and directives you had already received and ignored since February and in light of the pressing need to give timely makeup tests to the students, he directed you to make contact with the students within twenty-four hours, and to make available the makeup tests within four business days. See Exhibit 10.

On April 13, 2020, you responded to Dean LaCourse, accusing him of violating your civil rights because he provided you with a deadline that encompassed Passover. Your email included no statement that you had either complied with or intended to comply with his directive. See Exhibit 11.

Since February 2020, you have intentionally, willfully, and steadfastly refused to honor and provide the authorized accommodations for make-up tests to the students in your Math 221 class, denying them their civil rights. You have been provided with ample and adequate explanations of the law and your obligations, and you have received three warnings of potential discipline for non-compliance with the directives. Dean LaCourse specifically advised you that failure to comply with these directives and provide the required accommodations would constitute terminable offenses of professional misconduct and willful neglect of duty. Your abject disregard for your students as a tenured professor, your repeated refusal to provide accommodations in the face of federal law, and your intentional denial of the students' civil rights form the foundation for charges of professional misconduct. Your repeated failure to act upon your obligations and in the face of directives from your Chair and Dean represents an egregious series of actions that constitute willful neglect of your duties.

Willful Neglect

Failure to attend mandatory Title IX/Sexual Misconduct Awareness training, in either of the required formats (in-person and on-line training) while serving in an active tenured faculty position and designated as a Responsible Employee¹.

On November 13, 2018, the UMBC Faculty Senate convened. As a member of the Senate, your attendance is confirmed in the Meeting Minutes. A substantial portion of the discussions during the meeting involved mandatory Title IX/Sexual Misconduct Awareness training initiatives (see Exhibit 12). The Faculty Senate Agendas for November and December 2018 are included at Exhibit 13. As a result of the November Faculty Senate meeting, the Faculty Senate published a Senate Statement

¹ See VI-1.60 USM Policy on Sexual Misconduct and UMBC Sexual Misconduct, Interpersonal Violence, and Other Related Misconduct Policy.

which, among other points, supported campus mandatory training in support of Title IX, the Clery Act, and related USM policies (see Exhibit 14).

On November 15, 2018, I, together with Provost Rous, University Steering Committee Chair Adam Harvey, and Associate Provost for Academic Affairs Sarah Shin, published an email notice to each member of the campus community implementing the mandatory training discussed in the Faculty Senate meeting two days earlier, which stated in part,

...We are writing to update you on the implementation of mandatory Title IX/sexual misconduct awareness and prevention training that is required of all faculty, staff, and students. These required training activities expand on those already underway at UMBC.

This announcement set the requirements for this training as presented in the Faculty Senate meeting. It provided for mandatory in-person training for faculty, staff, graduate assistants, and student leaders *and* mandatory online training for faculty and staff. The following day, on November 16, 2018, this same message was posted on-line to the UMBC Community news and then distributed via email on November 17, 2018. On November 19, 2018, the announcement of the mandatory training requirement and the training schedule were also posted to the UMBC website under the Retriever Courage page (see Exhibit 15).

The posted training schedule included in all these notifications provided for the following schedule:

- Group 1: All academic, administrative, and student leaders will undergo training on December 6, 2018 (2 sessions).
- Group 2: All remaining Responsible Employees will undergo training on one of the following days: January 16, 17, 22, and 23, 2019 (13 sessions, including one evening session).
- Group 3: All remaining employees will undergo training on either May 20 or May 21, 2019 (6 sessions).

In addition to the mandatory in-person training, a shorter on-line training program was required for all faculty and staff as well. On or around November 20, 2018, automated emails were sent to all employees providing each employee with a link to access that mandatory on-line training entitled Title IX and Sexual Violence Prevention for Employees, offered through the SafeColleges training platform. Beginning on December 4, 2018, automated emails were sent to each individual, reminding them to take the on-line training. System logs show twenty-eight (28) emails were sent to you between December 4, 2018 and December 20, 2019, reminding you to take the required on-line training (see Exhibit 16). A representative sampling of the actual emails sent to you are also included at Exhibit 17.

On December 13, 2018, a reminder email was sent to all UMBC faculty and staff who had not yet registered for any of the scheduled, mandatory in-person trainings. UMBC records from the Enterprise Email Marketing Service Tracking Report show that you were sent, received, and opened the December 13, 2018 reminder email (see Exhibit 18). Further, in response to the December 13, 2018 email, you sent an email message dated December 17, 2018 to Mr. Kevin Joseph, Division of Information Technology, regarding your schedule and your unavailability for the January training sessions. It is clear you were fully cognizant of the requirement for training and the available training dates. Mr. Joseph responded to you that same day, urging you to sign up for the on-line portion of the training and providing you with the makeup dates for the face-to-face training scheduled for May 2019. See Exhibit 19.

On May 13, 2019, another reminder email was sent to you advising that you had not registered to attend any of the previously scheduled mandatory training sessions (see Exhibit 20). The email specifically advised that the University was “offering the following nine sessions for all remaining UMBC employees who have not yet registered for training and for all new employees who have not yet been trained:

- Session 1: May 20, from 9:00 a.m. to 11:00 a.m.
- Session 2: May 20, from 12:00 p.m. to 2:00 p.m.
- Session 3: May 20, from 3:00 p.m. to 5:00 p.m.
- Session 4: May 21, from 9:00 a.m. to 11:00 a.m.
- Session 5: May 21, from 12:00 p.m. to 2:00 p.m.
- Session 6: May 21, from 3:00 p.m. to 5:00 p.m.
- Session 7: August 20, from 9:00 a.m. to 11:00 a.m.
- Session 8: August 20, from 12:00 p.m. to 2:00 p.m.
- Session 9: August 20, from 3:00 p.m. to 5:00 p.m.

You will note that the University added additional training dates in August to specifically provide additional opportunities for employees to comply with the in-person training requirement.

You failed to attend any of the trainings offered from January 2019 through May 2019. Consequently, a personal follow-up letter from Dean William LaCourse was physically delivered to your departmental mailbox on July 11, 2019, with an electronic copy sent to your UMBC email address on that same date, advising you of your duty to participate in the mandatory in-person training and providing you with the next available training date and times for August 20, 2019 (See Exhibit 21). You did not respond.

In total, twenty-two in-person Title IX/Sexual Misconduct Awareness training sessions were offered between December 2018 and August 2019. You attended none of these mandatory sessions. Between November 2018 to the present, you also failed to take the required on-line training. You have received ample notice of these trainings and were notified numerous times of the mandatory nature

and timing of these trainings. Your conduct represents an egregious dereliction of duty and willful neglect of your duty as a tenured faculty member and a Responsible Employee.

Applicable Principles and Policies

The two policies that specifically govern faculty termination actions are the University System of Maryland (USM) Board of Regents' University System Policy on Appointment, Rank, and Tenure of Faculty (USM Policy II-1.00) (Exhibit 1), and UMBC Faculty Handbook, Section 8, Separation (Exhibit 22).

The policies provide for several instances in which a tenured faculty member may be dismissed. Pursuant to Section I.C.7(a) of the USM Policy, the President of the institution may terminate the appointment of a tenured or tenure-track appointee for "moral turpitude, professional or scholarly misconduct, incompetence, or willful neglect of duty...". Your appointment is being terminated for acts of Professional misconduct and willful neglect of duty. The [UMBC Faculty Handbook](#) Section 8.2 cites these same bases for termination. While the Handbook provides some examples of conduct that can fall into the categories established by the USM Policy, the Handbook notes that these are examples only. These examples are meant to give an understanding of the kinds of actions that may result in dismissal, but they are not an inclusive list of actions nor are they fully or exclusively determinative of all terminable behavior.

Conclusion

In considering the egregiousness of your conduct, the magnitude of the impact on student performance assessment, the importance of unbiased, equitable, and full performance assessment, the steadfast and deliberate denial of student civil rights, the intentional disregard for complying with directives, and the impact major failures such as shown herein have on students and on UMBC's obligation to comply with applicable federal law, you have demonstrated professional misconduct, a willful neglect of duty, and a professional unfitness for your duties and responsibilities as a member of UMBC's faculty.

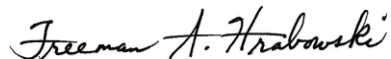
Therefore, pursuant to University System of Maryland (USM) Board of Regents' University System Policy on Appointment, Rank, and Tenure of Faculty (USM Policy II-1.00), Section C. 8, your appointment is hereby terminated for professional misconduct and willful neglect of duty. Under this policy, upon termination for professional misconduct, you shall receive no notice or further compensation beyond the date of final action by the chief executive or the Board of Regents.

Prior to your termination, you have the right to request a hearing by an impartial hearing officer appointed by the President or a faculty board of review. Your request for a hearing must be made within thirty calendar days from your receipt of this termination notice. See Exhibits 1 and 22 for the policies and procedures applicable to this process.

Finally, in light of your continued refusal since February to provide the students in your class with their civil rights under the law, and your failure to attend mandatory sexual misconduct awareness

training in both forms, you are also re-assigned out of your classes effective immediately. You will continue to perform your other duties within the department pending the outcome of your termination process. You are directed to preserve and immediately turn over to Dr. Biswas, the department chair, materials, whether in hardcopy and/or electronic format, associated with your current classes for the entire semester. These materials will include grade books and other grading materials, course syllabi and grading rubrics, all assessment documents (e.g., exams, tests and quizzes) and all student work and assignments which are in your possession whether or not these materials have been graded.

Sincerely,

A handwritten signature in cursive script that reads "Freeman A. Hrabowski".

Freeman A. Hrabowski, III
President

Exhibits (22)

xc: Philip J. Rous, Ph.D.
William LaCourse, Ph.D.
Animikh Biswas, Ph.D.
David R. Gleason, Esq.