ANNUAL REPORT OF THE FACULTY SENATE COMMITTEE ON PROFESSIONAL ETHICS AND ACADEMIC FREEDOM
2016-2017

The Faculty Senate Committee on Professional Ethics and Academic Freedom (“PEAF”) held four meetings and also conducted extensive discussions via email during the 2016-2017 academic year. Following is a summary of the major issues on which the Committee worked during the year.

**Joint Projects with the Educational Policy Committee**

The Committee worked on three projects with the Educational Policy Committee (EPC). First, the Committee reviewed a proposal by Deputy Provost Teresa Murphy to adopt a new credit hour policy in accordance with requirements promulgated by the Department of Education. The EPC endorsed the new credit hour policy before it was referred to our Committee. Our Committee met with Deputy Provost Murphy to discuss the new policy, and the Committee endorsed the policy following that discussion. The new credit hour policy has been inserted in the Faculty Handbook, and the Provost’s Office has communicated the policy to each of the schools.

Second, the Committee reviewed the EPC’s proposed resolution to establish a new academic forgiveness policy. Our Committee met with Professor Philip Wirtz, Chair of the EPC, and Thomas Falcigno, Executive Vice President of the GW Student Association, to discuss the proposed academic forgiveness policy. The policy would allow undergraduate students to repeat one course from their first year if they receive a grade of D+ or lower in that course. Following our meeting with Professor Wirtz and Mr. Falcigno, our Committee voted to approve the EPC’s proposed resolution. That resolution was adopted by the Faculty Senate (with one change) as Resolution 17/2.

Third, in April 2016 our Committee and the EPC established a Joint Task Force to examine the role of school and departmental faculty in reviewing and approving standards, curricula, and procedures for online courses and online certificate and degree programs. The Joint Task Force undertook a comprehensive review of GW’s online courses and online certificate and degree programs under the leadership of its Chair, Professor Kurt Darr. On March 13, 2017, the Joint Task Force presented its report to our Committee, the EPC, and the Executive Committee. It is expected that our Committee and the EPC will review the Joint Task Force’s report in the fall semester of 2017 and will determine whether to submit recommendations to the Faculty Senate regarding standards and procedures for approving and monitoring online courses and online certificate and degree programs.

**Responding to Problems Encountered by the Dispute Resolution Committee**

In the fall semester of 2016, our Committee received information from Professor Joan Schaffner, Chair of the Dispute Resolution Committee, and her predecessor, Professor Darr, about significant problems that the Dispute Resolution Committee and Hearing Committees had encountered in two proceedings that occurred during the past several years. The Committee
investigated the circumstances surrounding those two proceedings and expressed great concerns to Vice Provost for Academic Affairs Christopher Bracey based on the Committee’s understanding of those circumstances. After sharing its concerns, the Committee agreed with Provost Forrest Maltzman on a series of written understandings, which are designed to prevent similar problems from arising in the future. Those understandings were confirmed in a memorandum dated February 27, 2017, from Provost Maltzman (copy attached). Following are descriptions of the Committee’s findings and the written understandings with Provost Maltzman.

The first proceeding involved a grievance filed by a faculty member, pursuant to Part E of the Procedures for the Implementation of the Faculty Code (“Code Procedures”), after the Provost who was then in office denied that faculty member’s application for tenure and promotion. The Provost’s decision followed a dean’s decision to nonconcur with the relevant faculty department’s recommendation in favor of granting tenure and promotion to the faculty grievant. The dean relied in part on academic evaluations of the grievant’s scholarship that were not included in the grievant’s dossier and that had not been seen by the departmental committee on appointments, tenure and promotion. During the Hearing Committee’s consideration of the grievance, members of the Hearing Committee were given very limited access to the academic evaluations of the grievant’s scholarship. Hearing Committee members were allowed only to review copies of the evaluations by visiting the Provost’s office and taking notes. Hearing Committee members were not given access to those evaluations during the hearing or during their subsequent deliberations on the grievance. Our Committee determined that such limited access did not provide members of the Hearing Committee with a reasonable opportunity to review the evaluations in depth and to compare the contents of those evaluations with the contents of other documents included in the grievant’s dossier. Our Committee determined that the Hearing Committee’s very limited access to the academic evaluations was a serious procedural shortcoming, because the detailed contents of academic evaluations of a candidate’s scholarship typically play a very important role in determining whether the Administration will concur or nonconcur with a faculty recommendation regarding tenure or promotion.

In response to the great concerns expressed by our Committee about the first proceeding, Provost Maltzman established the following written understanding, which was confirmed in his memorandum of February 27th: If the Office of the Provost intends, during a proceeding under Part E or Part F of the Code Procedures, to maintain the confidentiality of documents that were obtained or produced on a confidential basis (including, for example, academic evaluations of scholarship), the Office of the Provost will provide encrypted files containing all relevant non-privileged confidential documents to members of the Hearing Committee (as well as members of the Dispute Resolution Committee, in the event of an appeal) so that members of those Committees will have access to all confidential documents for as long as is necessary for the applicable Committee to reach a decision in the relevant proceeding. In providing such encrypted files, the Office of the Provost will follow the same approach that it has followed in recent years when it has provided encrypted tenure and/or promotion files to members of the Faculty Senate Executive Committee pursuant to Part B.7 of the Code Procedures in connection with nonconcurrences with faculty recommendations regarding tenure and/or promotion. Members of the Hearing Committee (as well as members of the Dispute Resolution Committee, in the event of an appeal) will be instructed and expected to maintain the confidentiality of documents provided throughout and after the proceeding.
The second proceeding arose out of a complaint by the Provost who was then in office and the dean of a school to dismiss a tenured faculty member for cause under Part F of the Code Procedures. The Hearing Committee decided, after a hearing, that the Provost and the dean had not shown adequate cause for dismissal of the faculty member. The Hearing Committee also recommended that the faculty member should be reimbursed for attorney’s fees and expenses. The Provost then in office and the dean did not appeal the Hearing Committee’s decision. In addition, the Provost did not issue a determination and a supporting written explanation stating that there were compelling reasons not to implement the Hearing Committee’s decision as provided in Part E.7 of the Code Procedures. However, despite the absence of any appeal or any determination and explanation of compelling reasons, the Provost then in office did not implement the Hearing Committee’s decision and did not follow the Hearing Committee’s recommendation to reimburse the faculty member’s attorney’s fees and expenses. Instead, based on documents that the faculty member’s attorney sent to the Chair of the Dispute Resolution Committee and members of the Hearing Committee, the University’s outside counsel apparently notified the faculty member’s attorney that the faculty member would be suspended from the faculty for one year without pay unless the faculty member accepted a buyout and resigned from the faculty. The faculty member subsequently agreed to a buyout and resigned.

Based on the facts available to our Committee, including documents that were sent by the faculty member’s attorney to the Chair of the Dispute Resolution Committee and members of the Hearing Committee, our Committee was greatly concerned that (1) the Provost then in office evidently failed to follow the procedures required by Part E.7 of the Code Procedures for declining to implement the Hearing Committee’s final decision, and (2) the University’s outside counsel apparently undermined the integrity and effectiveness of the Hearing Committee’s decision by threatening a very severe sanction against the faculty member unless the faculty member accepted a buyout and resigned from the faculty.

In response to the great concerns expressed by our Committee about the second proceeding, Provost Maltzman established the following written understanding, which was confirmed in his memorandum of February 27th: If the Provost determines not to implement a decision of a Hearing Committee or the Dispute Resolution Committee in a proceeding under either Part E or Part F of the Code Procedures, the Provost will timely issue a written determination and explanation of compelling reasons for not implementing that decision (copying the faculty member, the Chair of the Dispute Resolution Committee, and the Chair of the Faculty Senate Executive Committee) as provided in Part E.7 of the Code Procedures. In addition, following a decision of the relevant Committee in such a proceeding, neither the Provost nor any other University officer or representative will impose any sanction against a faculty member who is a prevailing party in that proceeding that is inconsistent with the decision of the relevant Committee, unless the Provost appeals the determination or issues the above-referenced determination and explanation of compelling reasons for not implementing the decision of the relevant Committee. However, the foregoing understanding does not limit the Provost’s ability to take appropriate actions necessary for ensuring the immediate safety of the GW community, nor does it preclude efforts to resolve any grievance (even after a decision has been made by the relevant Committee) through discussions with the faculty member (and/or legal counsel for the faculty member). With the written permission of the faculty member involved, the Provost will inform the Chair of the Dispute Resolution Committee if such negotiations are occurring, and at the conclusion of such negotiations, whether a resolution was
or was not achieved. The Chair of the Dispute Resolution Committee must agree to keep such information confidential.

The Committee is grateful to Provost Maltzman and to Vice Provost Bracey for their assistance in resolving the Committee’s concerns through the foregoing understandings as confirmed in Provost Maltzman’s memorandum of February 27, 2017.

Resolution Recommending Guidelines for Exercising and Defending Academic Freedom

At our Committee’s meeting on March 1, 2017, the Committee approved “A Resolution Recommending the Adoption of Guidelines for Exercising and Defending Academic Freedom” (copy attached). That Resolution was adopted unanimously by the Faculty Senate, without any change, as Resolution 17/4 at the Senate’s meeting on April 7, 2017.

Our Committee began working on this Resolution in response to a request and statement of concern from Professor Hugh Agnew at the Faculty Senate’s meeting on December 9, 2016. In preparing this Resolution, our Committee identified two principal areas of concern related to the exercise and defense of academic freedom. Both concerns have been highlighted by events that have occurred on university campuses during 2016 and 2017. The first concern arises out of disruptions of public speeches on several campuses, including the University of California at Berkeley and Middlebury College. A similar event occurred recently at GW, when several outside protesters attempted to disrupt a GW Law School debate over Presidential war powers between Professor Jonathan Turley (GW Law) and Professor John Yoo (Cal-Berkeley). Law School staff members and GW Police officers responded to that attempted disruption with great professionalism, and they persuaded the protesters to stop their attempted disruption and leave the event. Members of our Committee also expressed the further concern that similar disruptions could potentially occur in the classroom setting during discussions of controversial topics.

Our Committee’s second area of concern arises out of the publication by outside groups of numerous “watch lists,” which include the names of professors who hold views that the outside groups oppose. Some GW faculty members have been named on such “watch lists.” In addition, there are recent indications that outside groups may be sending anonymous members into classrooms to record lectures and class discussions secretly in order to gather material for potential complaints against faculty members on “watch lists.”

In light of both concerns, our Committee concluded that GW should adopt more detailed guidelines to reaffirm the principles of academic freedom and freedom of expression that are incorporated in the University’s Faculty Code and other University policies. Under Article II of the Faculty Code, the Faculty Senate has authority to recommend additional guidelines governing the academic freedom of faculty members. In addition, Article II expressly recognizes that academic freedom includes freedom of expression. Resolution 17/4 implements both aspects of Article II by recommending detailed Guidelines for Exercising and Defending Academic Freedom.

In her lecture at Lisner Auditorium on February 23, 2017, Supreme Court Justice Ruth Bader Ginsburg declared that “the right to speak one’s mind out” and “the right to think, speak and write as we believe” are essential features of “what make America great,” and she called on
American institutions to defend those rights. The Guidelines recommended by Resolution 17/4 are designed to implement Justice Ginsburg’s very important insights. The Committee hopes that the Board of Trustees will approve the Guidelines in the form recommended by our Committee and the Faculty Senate.

The Committee prepared its initial draft of the recommended Guidelines based on similar principles of academic freedom and freedom of expression adopted by the University of Chicago and Princeton University. The Committee subsequently sought extensive suggestions, and recommendations from several members of the Law School faculty in order to improve and clarify the Guidelines. The Committee very much appreciates the highly valuable comments and recommendations it received from Professors John Banzhaf, Robert Cottrol, Miriam Galston, Laurie Kohn, and Catherine Ross.

**Proposed Amendments to Correct “Glitches” in the Faculty Code**

The Board of Trustees approved extensive amendments to the Faculty Code in June 2016. The schools are currently in the process of revising their rules in order to conform those rules to the amended provisions of the Faculty Code. As the schools have reviewed the amended Faculty Code and revised their rules, certain “glitches” have been identified in the amended Faculty Code. The Committee has developed a list of “glitches” that should be reviewed and corrected, if possible by the Committee and the Faculty Senate during the 2017-2018 academic year. That list, which includes a description of the need for corrections and the reasons for the Committee’s recommended changes, is attached to this report.

**Possible Item for Consideration by Next Year’s Committee**

One of our Committee’s members, Professor Nicholas Kyriakopoulos, has recommended that next year’s Committee should consider an amendment to Article X.A of the Faculty Code. His recommended amendment would provide that a faculty member is not required to pursue a grievance before filing a lawsuit to seek judicial remedies for an infringement of the faculty member’s rights or privileges by the University. Such an amendment would require language similar to the following at the end of the final sentence of Article X.A: “; provided, however, that a faculty member shall not be required to pursue a grievance under this Article before filing a lawsuit to seek judicial remedies for an infringement of the faculty member’s rights or privileges by the University.”

I am deeply grateful to the members of the Committee for their extraordinary dedication in accomplishing all of the work described above. I also would like to thank Provost Forrest Maltzman, Vice Provost for Academic Affairs Christopher Bracey, and University Counsel Richard Weitzner for their cooperation and assistance to the Committee.

Respectfully submitted,

Arthur E. Wilmarth, Jr., Chair
cc: Professor Charles Garris, Chair, Faculty Senate Executive Committee
Ms. Liz Carlson, Faculty Senate Coordinator

Faculty and staff members of the PEAF Committee, 2016-17:

Deborah Bezanson (Gelman Library)
Brian Biles (Emeritus, GWSPH)
Maria Cseh (GSEHD)
Kurt Darr (Emeritus, GWSPH)
Jennifer Frey (GSEHD)
Charles Garris (SEAS)
Delores Gibson (GSEHD Staff)
Dina Khoury (CCAS)
Nicholas Kyriakopoulos (SEAS)
Murray Loew (SEAS)
Kate Malliarakis (SON)
Ioan Marginean (CCAS)
Sylvia Marotta-Walters (GSEHD)
Raja Mazumder (SMHS)
Melani McAlister (CCAS)
Ashesh Patel (SMHS)
Lilien Robinson (CCAS)
Katalin Roth (SMHS)
Dolsy Smith (Libraries Staff)
Joel Teitelbaum (GWSPH)

Attachments: (1) Memorandum dated Feb. 27, 2017, from Provost Maltzman, (2) Resolution 17/4, and (3) current list of Faculty Code “glitches”
February 27, 2017

To: Art Wilmarth, Chair of the Committee on Professional Ethics and Academic Freedom

FROM: Forrest Maltzman, Provost and Professor of Political Science

RE: Dispute Resolution Committee and Subsequent Action

Based on a number of discussions held between you and members of my staff, I thought it important to memorialize my thoughts on the application of certain provisions in the Faculty Code.

The first relates to access by the Dispute Resolution Committee of certain confidential documents in cases where a disappointed candidate for tenure or promotion files a grievance under the Code. If the Office of the Provost intends, during a proceeding under Part E or Part F of the Procedures for the Implementation of the Faculty Code, to maintain the confidentiality of documents that were obtained or produced on a confidential basis (including, for example, academic evaluations of scholarship), the Office of the Provost will provide encrypted files containing all relevant non-privileged confidential documents to members of the Hearing Committee (as well as members of the Dispute Resolution Committee, in the event of an appeal) so that members of those Committees will have access to all confidential documents for so long as is necessary for the applicable Committee to reach a decision in the relevant proceeding. In providing such encrypted files, the Office of the Provost will follow the same approach that it has followed in recent years when it has provided encrypted tenure and/or promotion files to members of the Faculty Senate Executive Committee pursuant to Part B.7 of the Procedures for the Implementation of the Faculty Code in connection with nonconcurrency with faculty recommendations regarding tenure and/or promotion. Members of the Hearing Committee (as well as members of the Dispute Resolution Committee, in the event of an appeal) will be instructed and expected to maintain the confidentiality of documents provided throughout and after the proceeding.

The second relates to actions taken by the Provost after a decision on a grievance or tenure revocation proceeding is made by the relevant faculty Committee. If the Provost determines not to implement a decision of a Hearing Committee or the Dispute Resolution Committee in a proceeding under either Part E or Part F of the Procedures for the Implementation of the Faculty Code, the Provost will timely issue a written determination and explanation of compelling reasons for not implementing that decision (copying the faculty member, the Chair of the Dispute Resolution Committee, and the Chair of the Faculty Senate Executive Committee) as provided in Part E.7 of those Procedures. In addition, following a decision of the relevant Committee in such a proceeding, neither the Provost nor any other University

officer or representative will impose any sanction against a faculty member who is a prevailing party in that proceeding that is inconsistent with the decision of the relevant Committee, unless the Provost appeals the determination or issues the above-referenced determination and explanation of compelling reasons for not implementing the decision of the relevant Committee. However, this does not limit the ability of the Provost to take appropriate actions necessary for ensuring the immediate safety of the GW community; nor does it preclude efforts to resolve any grievance (even after a decision has been made by the relevant Committee) through discussions with the faculty member (and/or legal counsel for the faculty member). As I am sure you understand, such discussions regarding resolution are very sensitive, and disclosure to others of the substance (or even existence) of such discussions may jeopardize their success. That said, with the written permission of the faculty member involved, the Provost will inform the Chair of the Dispute Resolution Committee if such negotiations are occurring, and at the conclusion of such negotiations, whether a resolution was or was not achieved. The Chair of the Dispute Resolution Committee must agree to keep such information confidential.

Finally, you have expressed the view that the term “compelling reasons” in Part E.7 of the Code Procedures refers to reasons that have a degree of significance comparable to the “compelling reasons” that are specified in Part IV.E of the Faculty Code for nonconcurrences with faculty recommendations for tenure or promotion. While I agree that the term “compelling reasons” in Part E.7 of the Code has a degree of significance generally reflected in Part IV. E.7 of the Code for nonconcurrences, these two provisions of the Code serve two different purposes, one having to do with a final decision on tenure and promotion applications (Part IV.E.7) and the other having to do with the disposition of faculty grievances on a broad range of issues as well as tenure revocation cases. Further, to my knowledge, there has not been any prior concerns about the Provost’s articulation of “compelling reasons” in grievances under Part E.7 of the Code Procedures. And, to take a step back, I think it is worth emphasizing the grounds for bringing a grievance in the first instance as set forth in Article X.B. of the Faculty Code, especially as it pertains to grievances over tenure and promotion decisions. A disappointed candidate for tenure or promotion who files a grievance must allege – and establish by clear and convincing evidence – that he or she suffered a substantial injury arising from acts of discrimination, failure to comply with the Faculty Code or other university-established rules, arbitrary and capricious actions, or retaliation. And, in evaluating whether the faculty grievant met his or burden, the Dispute Resolution Committee cannot substitute its judgment on the merits of a tenure or promotion case. (Section E.c)7) of the Procedures for the Implementation of the Faculty Code. A determination by the Dispute Resolution Committee that was not based on these principles would serve as compelling reasons for the Provost not to implement a decision of the Dispute Resolution Committee. Such a position is necessary to ensure consistency with the Faculty Code and preserves the Faculty Senate Executive Committee’s role in the review of a nonconcurrence in tenure and promotion cases.

If you have any questions, let me know.
A RESOLUTION RECOMMENDING THE ADOPTION OF
GUIDELINES FOR EXERCISING AND DEFENDING ACADEMIC FREEDOM (17/4)

WHEREAS, Article II of the University’s Faculty Code is entitled “Academic Freedom” and provides:

“Subject only to legal restrictions and such guidelines as shall be recommended by the Faculty Senate and adopted by the university:

A. A faculty member shall enjoy freedom of expression. In the classroom (physical, virtual, and wherever located), a faculty member’s exposition shall be guided by the requirements of effective teaching, adherence to scholarly standards, and encouragement of freedom of inquiry among students. In speaking and writing outside the University, a faculty member shall not attribute his or her personal views to the University.

B. A faculty member shall enjoy freedom of investigation.

C. Consistent with academic freedom, faculty members should show respect for the opinions of others and foster and defend intellectual honesty, freedom of inquiry and instruction, and the free expression of ideas.”

WHEREAS, The University’s Statement of Ethical Principles, which is quoted in Section 6.4 of the University’s Faculty Handbook, includes the following statements under the headings "Integrity and Respect":

"The university community is diverse -- in race, background, age, religion, and in many other ways. The personal actions of each community member establish and maintain the culture of tolerance and respect for which we strive. The university is committed to free inquiry, free expression, and the vigorous discussion and debate on which the advancement of its educational mission depends. At the same time, trustees, senior officials, faculty, principal investigators, staff, student employees, and others acting on behalf of the university should respect the rights and dignity of others regardless of their differences, and must conscientiously comply with non-discrimination policies adopted by the university.” (Emphasis added)

WHEREAS, The same sentence shown in bold type above is also included on page 1 of the University’s Sexual Harassment and Sexual Violence Policy and Procedures. Page 3 of that document includes the following additional statements:

"Nothing in this policy limits academic freedom, guaranteed by the Faculty Code, which is a pre-eminent value of the university. This policy shall not be interpreted to abridge academic freedom. Accordingly, in an academic setting expression that
is reasonably designed or reasonably intended to contribute to academic inquiry, education or debate on issues of public concern shall not be construed as sexual harassment."

WHEREAS, Recent events occurring on university campuses and in political and social contexts (including online discussion groups) have included (1) violence and threats of violence that have resulted in disruptions or cancellations of speeches at university-sanctioned forums, and (2) the placing of faculty members (including members of this University’s faculty) on “target lists” created by various groups based on the publicly-expressed views of those faculty members.

WHEREAS, The foregoing events have created serious concerns among members of the University’s faculty regarding the potential vulnerability of the academic freedom of faculty members and the need for the University to adopt additional guidelines to defend faculty members and other members of the University community against attempts by persons within or outside the University to restrict or impair the exercise of academic freedom and freedom of expression.

WHEREAS, In remarks delivered by Supreme Court Justice Ruth Bader Ginsburg at a recent public event in the University’s Lisner Auditorium, Justice Ginsburg told the audience that “the right to speak one’s mind out” and “the right to think, speak and write as we believe” are essential features of “what makes America great.”¹

WHEREAS, The Faculty Senate has traditionally exercised great caution before deciding to consider resolutions advocating particular views or positions on political or social issues that are the subject of scholarly disagreement and debate, because such resolutions could have a chilling effect on the exercise of academic freedom and freedom of expression by the University’s faculty and other members of the University community.

WHEREAS, The attached Guidelines for Exercising and Defending Academic Freedom have been drawn in part from similar policies upholding academic freedom and freedom of expression, which have been adopted by the University of Chicago and Princeton University.

WHEREAS, Based on the foregoing principles and considerations, the Faculty Senate approves and endorses the Guidelines for Exercising and Defending Academic Freedom in the form attached to this Resolution, and the Faculty Senate also recommends that, as contemplated by Article II of the Faculty Code, the University should formally adopt those Guidelines.

NOW, THEREFORE, BE IT HEREBY RESOLVED BY THE FACULTY SENATE OF GEORGE WASHINGTON UNIVERSITY

(1) That the Faculty Senate hereby approves and endorses the Guidelines for Exercising and Defending Academic Freedom in the form attached to this Resolution.

(2) That the Faculty Senate hereby recommends that the attached Guidelines for Exercising and Defending Academic Freedom should be adopted by the University as contemplated by Article II of the Faculty Code.

(3) That the Faculty Senate hereby requests that the President of the University forward this Resolution and the attached Guidelines for Exercising and Defending Academic Freedom to the Board of Trustees for its consideration.

(4) That the Faculty Senate hereby requests that the Board of Trustees consult with the Faculty Senate and provide a reasonable opportunity for the Faculty Senate to adopt a resolution presenting its further recommendations before the Board of Trustees adopts guidelines related to academic freedom that are different from the attached Guidelines for Exercising and Defending Academic Freedom.

March 1, 2017
Faculty Senate Committee on Professional Ethics and Academic Freedom
Appendix

THE GEORGE WASHINGTON UNIVERSITY
GUIDELINES FOR EXERCISING AND DEFENDING ACADEMIC FREEDOM

1. As recognized in Article II of the University’s Faculty Code, the University is committed
to the principles of academic freedom, including free inquiry, free expression, and the
vigorous discussion and debate on which the advancement of the University’s
educational mission depends. The University therefore guarantees to faculty members
and other members of the University community the broadest possible latitude to inquire,
speak, write, listen, challenge, and learn, except insofar as viewpoint-neutral and content-
neutral limitations on that freedom are demonstrably necessary to permit the University
to perform its essential academic and educational functions (including, for example, the
holding of classes and the conduct of authorized research activities without interference
or disruption by individuals or groups inside or outside the University community).

2. The ideas of different faculty members and of various other members of the University
community will often and quite naturally conflict. But it is not the proper role of the
University to attempt to shield individuals within or outside the University from ideas
and opinions they find unwelcome, disagreeable, or even deeply offensive. Although the
University greatly values civility, and although all members of the University community
should strive to maintain a climate of mutual respect, concerns about civility and mutual
respect cannot justify closing off the discussion of ideas protected by academic freedom
and freedom of expression and inquiry, however offensive or disagreeable those ideas
may be to some persons within or outside the University community. Indeed, fostering
the ability of faculty members and other members of the University community to
exercise their rights to engage in free inquiry, expression, debate, and deliberation is an
essential part of the University’s educational mission. Where there appears to be a
conflict between the rights of free expression and free inquiry, on one hand, and concerns
about potentially offensive statements, on the other, the University’s educational mission
requires it to give priority to the rights of free expression and free inquiry.

3. The freedom to debate and discuss the merits of competing ideas does not, of course,
mean that faculty members and other members of the University community may say
whatever they wish, whenever and wherever they wish, while carrying out their duties
and fulfilling their respective roles within the University. In carrying out such duties and
fulfilling such roles, faculty members and other members of the University community
do not have the right to engage in expression that (1) violates clearly established law (for
eexample, by making criminal or tortious threats or by engaging in tortious defamation
or prohibited sexual harassment), or (2) violates University policies that are viewpoint-
neutral and content-neutral and are demonstrably necessary (A) to enable the University
to maintain the integrity of scholarly standards of teaching and research, or (B) to
regulate the time, place, and manner of expression in order to prevent disruptions of the
University’s essential academic and educational functions, or (C) to enable the University
to comply with applicable federal and local laws.
4. Faculty members and other members of the University community are free to criticize and contest the views expressed on campus, and to criticize and contest the views of speakers who have been invited to express their views on campus. However, faculty members and other members of the University community may not obstruct or interfere with the rights of others on campus to express their views (for example, by blocking access to a University-sanctioned forum or by attempting to silence or shout down a speaker at such a forum). To this end, the University has a solemn responsibility to take reasonable, customary, and lawful measures to protect the exercise of freedom of academic inquiry, expression, debate, and deliberation by members of the faculty, other members of the University community, and invited guests when persons within or outside the University attempt to obstruct or interfere with that exercise. For example, the University should take appropriate disciplinary action against members of the University community who intentionally obstruct or interfere with the exercise of academic freedom and freedom of expression and inquiry that are protected under these guidelines.

5. If faculty members believe that their right to exercise academic freedom under Article II of the Faculty Code and these Guidelines has been restricted or impaired by actions or threats from persons within or outside the University, those faculty members may contact the Chair of the Faculty Senate Executive Committee, the Chair of the Faculty Senate Committee on Professional Ethics and Academic Freedom, or the Office of the Provost to obtain assistance. The University will take reasonable, customary, and lawful measures to protect faculty members against non-trivial impairments of their right to exercise academic freedom, including threats from persons within or outside the University community.
Possible Amendments to the Faculty Code to Correct “Glitches”

1. Remove the “full-time” condition for “Regular Faculty” status in order to provide greater flexibility for Regular Faculty members who receive approval for temporary part-time status or who decide to partially retire under Article VII.D. of the Faculty Code:

   REMOVE the words “full-time” before “faculty members” in the first sentence of Article I.B. of the Faculty Code.

2. Clarify that (1) the School-Wide Personnel Committee will consult with the chair of the departmental APT committee before obtaining any additional materials that are not contained in a tenure or promotion candidate’s dossier and will provide copies of all additional materials to the chair, and (2) the departmental APT committee will have an opportunity to respond to such materials:

   INSERT the following two new sentences AFTER the first sentence of Article IV.D.1 of the Faculty Code:

   "The School-Wide Personnel Committee shall consult with the chair of the responsible departmental committee before obtaining any additional materials and shall provide copies of all such additional materials to the chair of that committee. The departmental committee (either collectively or through its chair) may submit a written response to such additional materials."

3. Clarify that the faculty of a school may establish procedures for periodic reviews of the performance of the dean, in addition to the Provost’s periodic review:

   Insert the following two new sentences at the end of Part C.2.b)(ii)3) of the Procedures for the Implementation of the Faculty Code:
“The regular faculty of a school may establish additional rules and procedures, in accordance with Part A of these Procedures, for making periodic assessments of the dean's performance by the full-time faculty or an authorized faculty committee. Such periodic assessments may be combined with the Provost’s review of the dean under this subpart.”

4. **Clarify that appointments or promotions of regular, non-tenure-track faculty to the rank of Professor will give appropriate weight to the terms of their appointment (which assign different percentages of effort to research, teaching and service):**

   Amend Article IV.A.6.c) of the Faculty Code to read as follows by adding the following new clause, which is shown in ALL CAPS:

   “Decisions regarding appointments, re-appointments, and promotion of regular faculty for non-tenure-track positions at the rank of professor shall be based on published criteria that are substantially comparable (though not necessarily identical, AS INDICATED IN SECTION IV.B.2) to the published criteria that would be applied to faculty members serving in tenure-track appointments in the applicable department or nondepartmentalized school.”*

*Note: The first sentence of Section IV.B.2 provides: “Each school shall establish and publish written criteria, consistent with paragraph B.1, on which promotion to the ranks of associate professor and professor will be based, including any appropriate distinctions between the criteria for tenure-track and tenured faculty and those for non-tenure-track faculty members due to the different nature of their appointments.”
5. Clarify that a School-Wide Personnel Committee, a dean, or the Provost may issue a nonconcurrence with either a positive or negative recommendation by the departmental faculty (or school faculty, in the case of a nondepartmentalized school), and that the Executive Committee will have a role in attempting to resolve each nonconcurrence:

(a) Amend the first sentence of Part B.6 of the Procedures for the Implementation of the Faculty Code by adding the following parenthetical after the word “recommendations” at the end of that sentence: “(whether positive or negative).”

(b) Amend the third sentence of Part B.7 of the Procedures for the Implementation of the Faculty Code to read as follows (new text in ALL CAPS):

“If concurrence cannot be obtained after opportunity for reconsideration OF THE FACULTY RECOMMENDATION (WHETHER POSITIVE OR NEGATIVE) in light of the recommendations of the Executive Committee, the recommendations of the School-Wide Personnel Committee and appropriate administrative officers, accompanied by the recommendation of the department, and the report of the Executive Committee shall be transmitted to the President who will make a final decision, subject to Paragraph B.8.”