

**A RESOLUTION ON THE ESTABLISHED PROCEDURES FOR APPROVING ANY CHANGES  
TO THE FACULTY CODE OR FACULTY POLICIES THAT MAY BE  
RECOMMENDED BY THE BOARD OF TRUSTEES GOVERNANCE TASK FORCE (13/3)**

- WHEREAS,** The Faculty Senate has been informed by the President that, on May 17, 2013, the University’s Board of Trustees adopted a resolution to establish a task force (the “Board of Trustees Governance Task Force”) to conduct “a review of faculty governance over the 2013- 2014 academic year” and to consider the possibility of recommending “appropriate revisions” to the University’s *Faculty Code* and “related faculty governance documents” in light of the Board of Trustees’ recently adopted Strategic Plan for the University;
- WHEREAS,** The Faculty Senate recognizes that the *Faculty Code* and Faculty Policies must be adapted to meet changing conditions and needs within the University as well as emerging trends within the academic community more generally, and the Faculty Senate thus has a long history of working cooperatively with the Administration by considering and approving proposed changes to the *Faculty Code* and Faculty Policies in order to improve the quality of education and life within the University; [moved from #16 to #2]
- WHEREAS,** As provided in Article IX.A. of the *Faculty Code*, “The regular, active- status faculty shares with the officers of administration the responsibility for effective operation of the departments and schools and the University as a whole. . . . The regular, active-status faculty also participates in the formulation of policy and planning decisions affecting the quality of education and life at the University”;
- WHEREAS,** Article IX.A. of the *Faculty Code* thus affirms the vital importance of shared governance of the University based on constructive dialogue and cooperation between the faculty of the University (the “Faculty”) and the Administration;
- WHEREAS,** This proven model of shared governance has been developed incrementally and continuously improved at the University and is embodied in the *Faculty Code*, which was first promulgated in 1937 and has been subsequently changed on numerous occasions;
- WHEREAS,** The resolution adopted by the Board of Trustees on May 17, 2013, states that “the Board of Trustees recognizes the value of shared governance and of a strong and constructive relationship between the Faculty and the

Administration;”

**WHEREAS,** The preamble to the *Faculty Code* (inside cover page) states that it provides “the statement of the rights and privileges, and the responsibilities, of the academic personnel of the University,” and several decisions of courts in the District of Columbia have recognized that the *Faculty Code* constitutes a part of a binding and enforceable contract between the University and the members of the Faculty<sup>1</sup>;

**WHEREAS,** It is a fundamental principle of contract law, recognized by courts in the District of Columbia, that a contract may not be changed without the mutual consent of both parties as well as a mutual exchange of consideration<sup>2</sup>;

**WHEREAS,** Article III, Section 1(3) of the *Faculty Organization Plan* provides that the Faculty Senate is authorized to “consider any matters of concern or interest to . . . the Faculty, and to make its recommendations or otherwise express its opinion with respect thereto, to the [Faculty] Assembly, the President, or through the President to the Board of Trustees”;

**WHEREAS,** Article III, Section 1(4) of the *Faculty Organization Plan* provides that the Faculty Senate is “the Faculty agency to which the President initially presents information and which he consults concerning proposed changes in existing policies or promulgation of new policies”;

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<sup>1</sup> See *Kyriakopoulos v. George Washington University*, 866 F.2d 438 (D.C. Cir. 1989); *Saha v. George Washington University*, 577 F. Supp. 2d 439 (D.D.C. 2008); *Brown v. George Washington University*, 802 A.2d 382 (D.C. App. 2001); *Kakaes v. George Washington University*, 663 A.2d 128 (D.C.App. 1996).

<sup>2</sup> See *Rinck v. Association of Reserve City Bankers*, 676 A.2d 12 (D.C. App. 1996); *Hershon v. Hellman Co.*, 565 A.2d 282 (D.C. App. 1989).

**WHEREAS,** Article III, Section 1 of the *Faculty Organization Plan* therefore recognizes that the Faculty Senate is authorized to act as the Faculty’s elected representative and agent in considering and consenting to the adoption or change of policies governing the Faculty’s responsibilities, rights and privileges as provided in the University’s governance documents;

**WHEREAS,** Article III, Section 1 of the *Faculty Organization Plan* thus makes clear that the Faculty Senate is the Faculty’s elected representative and agent with which the Board of Trustees Governance Task Force must “engage” in carrying out its “review of faculty governance” pursuant to the Board of Trustees’ resolution of May 17, 2013;

**WHEREAS,** Pursuant to the long-established procedures and unbroken tradition for adopting or changing the *Faculty Code* and other policies governing the Faculty’s responsibilities, rights and privileges (“Faculty Policies”), the Faculty Senate, as the elected representative and agent of the Faculty, has always considered and acted on changes to the *Faculty Code* or Faculty Policies which are proposed by the Administration, the Board of Trustees or other members of the University community before such changes are submitted to the Board of Trustees;

**WHEREAS,** There is no precedent during the University’s history since the adoption of the *Faculty Code* in which the *Faculty Code* has been modified without satisfying the above-described procedures of review, recommendation and approval by the Faculty Senate on behalf of the Faculty before such modification was approved by the Board of Trustees;

~~**WHEREAS,** Any modification of the *Faculty Code* without the approval of the Faculty Senate on behalf of the Faculty would be contrary to the above cited court decisions, which have recognized that the *Faculty Code* is a binding and enforceable contract between the Faculty and the University and have also affirmed that a contract may not be changed without the mutual consent of both parties as well as a mutual exchange of consideration;~~

**WHEREAS,** While the participation of faculty members on the Board of Trustees Governance Task Force can provide the Task Force with a helpful diversity of perspectives, such participation cannot substitute for Faculty Senate participation and does not meet the standard of shared governance embraced by the *Faculty Code*;

**WHEREAS,** The substantial diligence, history, and collective wisdom embodied in the *Faculty*

*Code* reflect the fact that the *Faculty Code* has been incrementally and sequentially modified and improved over time since its original promulgation in 1937, and there is no precedent in the history of the University for any attempt to revise the entire *Faculty Code* at one time; **NOW, THEREFORE,**

**BE IT RESOLVED BY THE FACULTY SENATE OF  
THE GEORGE WASHINGTON UNIVERSITY**

1. The Faculty Senate expects that any changes to the *Faculty Code* or Faculty Policies recommended by the Board of Trustees Governance Task Force will adhere to the University's long-established and unbroken tradition and procedures of shared governance, which require the Faculty Senate, as the elected representative ~~and authorized agent~~ of the Faculty, to consider and act on changes to the *Faculty Code* or Faculty Policies that are proposed by the Administration, the Board of Trustees or other members of the University community before such changes are submitted to the Board of Trustees for final action; and

2. The Faculty Senate and its Committees are pleased to offer consultation to the Task Force in discussing proposed changes to the *Faculty Code* or other faculty governance documents during the course the Task Force's work, and the Faculty Senate will undertake a careful review of the final report of the Board of Trustees Governance Task Force after that report has been delivered to the Senate, and the Senate will ~~provide its recommendations to the Board of Trustees regarding any proposed changes~~ consider and act as expeditiously as possible on changes to the *Faculty Code* or Faculty Policies that are proposed by the Administration, the Board of Trustees, or other members of the University community before such changes are submitted to the Board of Trustees for final action.

**Committee on Professional Ethics and Academic Freedom  
October 28, 2013**

**Members of the Committee:**

- \*Garris, Charles A., Jr., Mechanical & Aerospace Engineering
- Ben-Tzvi, Pinhas, Mechanical & Aerospace Engineering
- Biles, Brian, Health Policy
- Butler, Joan, Clinical Research and Leadership
- \*Castleberry, Michael, Special Education & Disability Studies
- Cawley, James, Prevention & Community Health Studies
- Darr, Kurt J., Health Services Management & Policy
- Frey, Jennifer Rebecca, Special Education
- Irwig, Michael, Medicine
- Kyriakopoulos, Nicholas, Electrical & Computer Engineering
- Loew, Murray, Electrical & Computer Engineering
- Malliarakis, Kate Driscoll, Nursing
- \*McDonnell, Karen, Prevention & Community Health

Robinson, Lilien F., Art History  
Roth, Katalin, Medicine  
Teitlebaum, Joel, Health Policy  
Watkins, Ryan, Educational Leadership  
Wilmarth, Arthur E., Jr., Law  
Windsor, Richard, Prevention and Community Health

Ex-Officio (non-voting):

Vinson, Ben, Dean, Columbian College of Arts and Sciences  
Bezanson, Deborah, Associate University Librarian, Gelman Library  
Maggs, Gregory, Interim Dean, GW Law School  
Martin, C. Dianne, Vice Provost for Faculty Affairs  
Weitzner, Richard, Associate General Counsel

\*Member of the Faculty Senate

**Adopted as amended by the Faculty Senate, November 8, 2013**