

**A RESOLUTION RECOMMENDING A PROCEDURE FOR
AMENDING THE *FACULTY CODE* (16/7)**

WHEREAS, Article IX.A. of the *Faculty Code* provides: “The regular 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 faculty also participates in the formulation of policy and planning decisions affecting the quality of education and life at the university”; and

WHEREAS, Article IX.A. 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 University’s Administration, directed by the Board of Trustees; and

WHEREAS, Article III, Section 1 of the *Faculty Organization Plan* provides that (1) the Faculty Senate has authority to “consider any matters of concern or interest to more than one college, school, or division, or to the Faculty, and 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;” and (2) 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”; and

WHEREAS, The *Faculty Code* and the *Faculty Organization Plan* establish a proven and highly successful model of collaborative shared governance between the Faculty and the Administration, which has enabled the University to make notable and sustained progress since the 1930s; and

WHEREAS, The Faculty Senate recognizes that the *Faculty Code* must be updated on a regular basis to meet changing conditions and needs within the University and emerging trends within the academic enterprise more generally, and the Faculty Senate has a long history of considering, recommending and endorsing amendments to the *Faculty Code* in order to improve the quality of education and academic life within the University; and

WHEREAS, The Board of Trustees’ decision, on June 18, 2015, to approve important substantive amendments to the *Faculty Code* that were not previously endorsed by the Faculty Senate, without providing to the Senate an opportunity to give further consideration to those amendments and to issue recommendations with respect thereto, has created widespread and serious concerns among members of the Faculty Senate and the Faculty regarding the future role of the Faculty Senate and the Faculty within the University’s system of shared governance; and

WHEREAS, The *Faculty Code* does not provide an explicit procedure for approving amendments to that document; and

WHEREAS, To maintain a constructive and harmonious relationship between the Faculty Senate and the Board of Trustees, and to maintain the confidence of both groups in the University’s system of shared governance, an explicit procedure for amending the *Faculty Code* should be established that will assure consultation

and good faith deliberation between both groups with regard to any proposed amendments; and

WHEREAS, The Faculty Senate therefore strongly believes that (1) the *Faculty Code* should be amended to establish an explicit procedure for approving amendments, (2) that new procedure should ensure that the Faculty Senate will have a reasonable opportunity to consult with the Board of Trustees and adopt resolutions presenting its recommendations with respect to future proposed amendments to the *Faculty Code* before the Board of Trustees gives its final approval for such amendments, and (3) that procedure should stipulate that the Faculty Senate and the Board of Trustees will make good faith efforts to agree on the final text of future proposed amendments to the *Faculty Code* before the Board of Trustees gives its final approval for such amendments;

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

(1) That the *Faculty Code* be amended by inserting the following new Article XIII, which shall read as follows:

“XIII. Amendments

Amendments to this *Faculty Code* may be proposed by either the Board of Trustees or the Faculty Senate. Before approving any amendment to the *Faculty Code* that has not previously been endorsed by resolution of the Faculty Senate, the Board of Trustees will consult with the Faculty Senate and will provide a reasonable opportunity for the Faculty Senate to adopt a resolution presenting its recommendations with respect to the proposed amendment. When the Board of Trustees consults with the Faculty Senate on a proposed amendment to the *Faculty Code*, the Board of Trustees and the Faculty Senate will both make good faith efforts to agree on the final text of the amendment. Following such consultation and good faith efforts, the Board of Trustees may take final action on the proposed amendment after receiving and considering the resolution presenting the Faculty Senate’s recommendations or if the Faculty Senate fails to provide its recommendations within a reasonable time. Amendments to the *Faculty Code* will become effective upon final approval by the Board of Trustees.”

(2) That the Faculty Senate hereby requests that the President of the University forward the foregoing proposed amendment to the *Faculty Code* to the Board of Trustees for its consideration.

(3) That the Faculty Senate hereby requests, and expects, that the Board of Trustees will 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 approves any amendment to the *Faculty Code* that is different from the foregoing proposed amendment.

March 28, 2016

Faculty Senate Committee on Professional Ethics and Academic Freedom

Adopted as amended by the Faculty Senate
April 8, 2016

Report of the Faculty Senate Committee on Professional Ethics and Academic Freedom on Proposed Faculty Senate Resolution 16/7

March 28, 2016

The Faculty Senate Committee on Professional Ethics and Academic Freedom (“PEAF”) submits this report in support of proposed Faculty Senate Resolution 16/7, which the PEAF Committee approved on March 28, 2016. The purpose of this report is to provide a summary of the events that led to the adoption of Resolution 16/7, as well as the reasons for the amendment to the *Faculty Code* that Resolution 16/7 proposes. Resolution 16/7 would amend the *Faculty Code* by adding a new Article XIII, which would create a new procedure for amending the *Faculty Code*. As discussed below, Article XIII would establish a consultative and collaborative process between the University’s Board of Trustees and the Faculty Senate in proposing and considering amendments to the *Faculty Code*.

Under Article IX.A. of the *Faculty Code*, “The regular 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 faculty also participates in the formulation of policy and planning decisions affecting the quality of education and life at the university.” Thus, Article IX.A. 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 University’s Administration, directed by the Board of Trustees.

Article III, Section 1 of the *Faculty Organization Plan* provides that (1) the Faculty Senate has authority to “consider any matters of concern or interest to more than one college, school, or division, or to the Faculty, and 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;” and (2) 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.” The *Faculty Code* and the *Faculty Organization Plan* create a proven and highly successful system of collaborative shared governance between the Faculty and the Administration, which has enabled the University to make notable and sustained progress since the 1930s.

The *Faculty Code* and the *Faculty Organization Plan* are matters of great interest and concern to the Faculty because they represent a part of the contract of each member of the Faculty with the University (subject, in the case of certain part-time members of the Faculty, to the terms of a collective bargaining agreement between the University and Service Employees International Union, Local 500). Under Article IV.1.a) of the *Faculty Code*, a copy of the *Faculty Code* must accompany or precede each faculty member’s letter of appointment, and the *Faculty Code* “shall be considered part of the agreement between the faculty member and the University.” The *Faculty Code* includes a “Background” section, which affirms that the *Faculty Code* provides “the statement of the rights and privileges, and the responsibilities, of the academic personnel of the University.” In addition, several decisions of courts in the District of

Columbia have recognized that the *Faculty Code* constitutes part of a binding and enforceable contract between each member of the Faculty and the University.¹

On May 7, 2013, the University’s Board of Trustees adopted a resolution, which established a Governance Task Force and directed the Task Force to conduct “a review of faculty governance” and to consider “appropriate revisions” to the University’s *Faculty Code* and “related faculty governance documents” in light of the Board of Trustees’ approval of “Vision 2021: A Strategic Plan for the Third Century of The George Washington University.” In response to the Board of Trustees’ resolution, as well as subsequent discussions between representatives of the Board of Trustees and representatives of the Faculty Senate, the Faculty Senate adopted Resolution 13/3 on November 8, 2013. Resolution 13/3 stated:

“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 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.”

From 1965 to 2015, pursuant to the University’s longstanding tradition of collaborative shared governance, the Faculty Senate followed a consistent practice of considering and endorsing amendments to the *Faculty Code* that were proposed by the Administration, the Board of Trustees, or other members of the University community before such amendments were transmitted by the Administration to the Board of Trustees for final consideration and approval. The Executive Committee and the PEAFF Committee are aware of only one occasion between 1965 and May 2015 on which the Board of Trustees approved substantive changes to the *Faculty Code* without the Senate’s prior concurrence. In contrast, and as shown in Exhibit 1, during the same 50-year period, the Board of Trustees amended the *Faculty Code* on almost 50 occasions with the prior concurrence of the Faculty Senate.

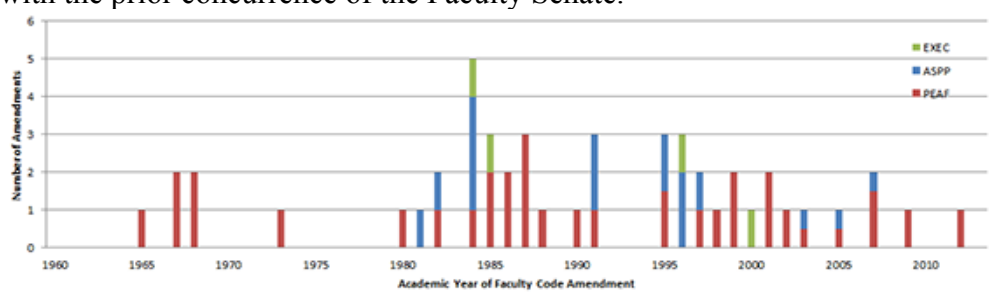


Exhibit 1-History of Changes to the GW Faculty Code

In 2014, the University’s Board of Trustees established working groups on university governance (the “Working Groups”), which included representatives of the Board of Trustees

¹ 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).

and the Administration, representatives of the Executive Committee, and other faculty members. On January 13, 2015, the Working Groups proposed sweeping and far-reaching amendments to the University's *Faculty Code* with respect to dean searches, composition of school faculties, and standards and procedures for approving applications for tenure and promotion. The Executive Committee, the PEAFC Committee, and the Committee on Appointments, Salary and Promotion Policies ("ASPP") carefully reviewed the Working Groups' proposals. On January 26, 2015, the three Senate Committees (the "Senate Committees") provided a detailed written response. That response advised the Working Groups that their proposals were not acceptable unless major modifications were made.

After receiving the advice provided by the Senate Committees, the Working Groups submitted modified proposals to amend the *Faculty Code* on March 23, 2015. The modified proposals of the Working Groups did not incorporate much of the advice provided by the Senate Committees, and the modified proposals were therefore unacceptable to the Senate Committees. Consequently, the Senate Committees prepared and submitted to the Faculty Senate three resolutions – Substitute Resolutions 16/1, 16/2, and 16/3 (the "Senate Resolutions") – which set forth counter-proposals for amendments to the *Faculty Code*. The counter-proposals of the Senate Committees were designed to improve academic standards and procedures while preserving the long-established role of the Faculty in dean searches, in determining the composition of school faculties, and in presenting and reviewing recommendations for tenure and promotion.

On May 8, 2015, the Faculty Senate adopted the Senate Resolutions by overwhelming votes after determining that (1) the Senate Resolutions would serve the best interests of the University and all of its constituencies and stakeholders (including the Faculty), and (2) the resolutions would help to advance the University's explicitly stated goals to "[e]xpand and improve our research and teaching"² and "to match the excitement of discovery and excellence of instruction with superior research."³ In the Senate Resolutions, the Faculty Senate requested that "the Board of Trustees not approve changes to the *Faculty Code* that are different from the amendments [endorsed by the Faculty Senate] until there has been an opportunity for further consultation with the Faculty Senate for the purpose of reaching a shared consensus on such changes." The Senate Resolutions also warned that any approval of different amendments by the Board of Trustees, without further consultation with the Faculty Senate, "would cause great concern among the Faculty regarding the future role of the Faculty Senate and the Faculty within the University's system of shared governance."

On June 10, 2015, the Faculty Senate Executive Committee held a teleconference meeting with the Academic Affairs Committee of the Board of Trustees. During that meeting, the Executive Committee identified and emphasized the very important differences between the Senate Resolutions and the Working Groups' modified proposals. The Executive Committee also offered suggestions on some potential changes to the *Faculty Code* amendments, as proposed in the Senate Resolutions, which might be acceptable to both the Faculty Senate and the Board of Trustees if the Faculty Senate were given an opportunity to consider and act on

² "Vision 2021: A Strategic Plan for the Third Century of The George Washington University," page 29, available at https://provost.gwu.edu/sites/provost.gwu.edu/files/downloads/Strategic%20Plan_May13.pdf.

³ See "GW Overview: University Priorities - Research," available at <http://www.gwu.edu/university-priorities>.

those potential changes. After hearing the Executive Committee's suggestions, members of the Academic Affairs Committee indicated that the Board of Trustees could decide, at its scheduled meeting on June 18, 2015, to adopt substantive amendments to the *Faculty Code* that had not been endorsed by the Faculty Senate in the Senate Resolutions. The Executive Committee responded by strongly recommending that the Board of Trustees should not give final approval to any such amendments until those amendments could be considered by the Faculty Senate when the Senate reconvened in September 2015.

On June 18, 2015, the Board of Trustees adopted a resolution in which it gave final approval to amendments to the *Faculty Code* with respect to dean searches and reviews, the composition of school faculties, and standards and procedures for approving applications for tenure and promotion. The amendments to the *Faculty Code* approved by the Board of Trustees incorporated many of the Faculty Senate's recommendations contained in the Senate Resolutions, but the amendments approved by the Board of Trustees also differed from the recommendations set forth in the Senate Resolutions in a number of very important and substantive respects.

On August 15, 2015, the Executive Committee provided a detailed report to the Faculty. The Executive Committee's report described the amendments approved the Board of Trustees on June 18, 2015, and the report also provided a side-by-side comparison between the approved amendments, the amendments proposed by the Faculty Senate, and the previous version of the relevant provisions of the *Faculty Code*. The Executive Committee's report was attached to the agenda for the Faculty Senate's meeting on September 11, 2015, and that report is available at http://www.gwu.edu/~facsen/faculty_senate/pdf/SenateAgenda_090515.pdf.

In sum, notwithstanding the Executive Committee's advice on June 10, 2015, the Board of Trustees approved a series of important substantive amendments to the *Faculty Code* on June 18, 2015, without giving the Faculty Senate the opportunity to consider and provide recommendations on amendments that had not been previously endorsed by the Faculty Senate. The Board of Trustees' decision to approve those amendments, without providing the Senate with an opportunity to consider and issue recommendations with respect thereto, has created widespread and serious concerns among members of the Faculty Senate and the Faculty generally regarding the future role of the Faculty Senate and the Faculty within the University's system of shared governance.

The procedure followed by the Board of Trustees in approving the most recent amendments to the *Faculty Code* has highlighted the significant problems created by the fact that the *Faculty Code* does not contain any explicit procedure for amending that document. To maintain a constructive and harmonious relationship between the Faculty Senate and the Board of Trustees, and to maintain the confidence of both groups and the Faculty in the University's system of shared governance, it is essential to establish an explicit procedure for amending the *Faculty Code*. Such an amending procedure should ensure that consultation and good faith deliberation will occur between the Faculty Senate and the Board of Trustees before future amendments to the *Faculty Code* are approved by the Board of Trustees.

As described in proposed Resolution 16/7, the PEAFF Committee strongly believes that the *Faculty Code* should be amended by inserting a new Article XIII, which will establish an explicit procedure for approving amendments to the *Faculty Code*. The new Article XIII should ensure that the Faculty Senate will have a reasonable opportunity to consult with the Board of Trustees and adopt resolutions presenting its recommendations with respect to future proposed amendments to the *Faculty Code* before the Board of Trustees gives its final approval for such amendments. In addition, Article XIII should stipulate that the Faculty Senate and the Board of Trustees will make good faith efforts to agree on the final text of future proposed amendments to the *Faculty Code* before the Board of Trustees gives its final approval for such amendments.

The PEAFF Committee has reviewed and approved this report as well as proposed Resolution 16/7. The PEAFF Committee strongly urges the Faculty Senate to adopt Resolution 16/7.

Respectfully submitted on behalf of the PEAFF Committee,

Arthur E. Wilmarth, Jr., Chair