

Resolution 18/3 (revised)
**A RESOLUTION TO AMEND ARTICLE X. A., RIGHTS, PRIVILEGES,
AND RESOLUTION OF DISPUTES UNDER THIS CODE**

WHEREAS: Article X.A., Rights and Privileges Under this *Code*, provides:

“The rights, privileges, and responsibilities of a faculty member, as conferred by this *Code*, shall be carefully safeguarded in accordance with the highest accepted principles, practices, and procedures of the academic community. An alleged infringement of such rights or privileges or an alleged violation of such responsibilities shall first be considered by the faculty member or members concerned, or by appropriate representatives of the faculty, in cooperation with the responsible administrative officers. If such consideration does not lead to an adjustment satisfactory to the parties involved, the procedures for the implementation of this Article shall be fully utilized.”; and

WHEREAS: The third sentence of Article X.A., Rights and Privileges Under this *Code* provides: If such consideration does not lead to an adjustment satisfactory to the parties involved, the procedures for the implementation of this Article shall be fully utilized.” (emphasis added); and

WHEREAS: Common use of shall is as a mandatory action, or an expression of an instruction or command; and

WHEREAS: The case of *Kyriakopoulos v. George Washington Univ.*, 657 F. Supp. 1525 (D.D.C. 1987) decided by the federal district court for the District of Columbia adjudicated issues regarding GWU’s grievance procedure, and the *Code* provisions regarding the grievance procedure interpreted in that case used language identical to the language used now; and

WHEREAS: The federal district court held that use of the grievance procedure was *not* mandatory; and

WHEREAS: The possible confusion between common use of “shall” and the judicial determination of the meaning of “shall” might mislead grievants or cause them to misunderstand their rights at law versus their rights under the *Code*; and

WHEREAS: Clarity is essential to an orderly and fair process for aggrieved faculty members; and

WHEREAS: It is prudent to follow judicial guidance for internal processes in resolving disputes at GWU; and

WHEREAS: Code language should make it clear that undertaking the grievance process is voluntary, not mandatory and is initiated by the grievant;

NOW, THEREFORE,

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

That the third sentence of Article X.A. is amended as follows:

“If such consideration does not lead to an adjustment satisfactory to the parties involved, the procedures for the implementation of this Article ~~shall~~ **may** be fully utilized **by the grievant.**”

Faculty Senate Committee on Professional Ethics and Academic Freedom
January 12, 2018

Recommitted by the Faculty Senate to the Committee on Professional Ethics and Academic Freedom
January 12, 2018

Revision returned to the Faculty Senate by the Faculty Senate Committee on Professional Ethics and Academic Freedom
February 9, 2018

Adopted by the Faculty Senate
February 9, 2018