

1 November 2018

Dear Faculty Senate Colleagues:

I am unable to attend the Faculty Senate meeting on November 5. The AAUP report that Dr. Alfred obtained provides an opportunity to understand how a third party, knowledgeable about faculty interests, views work that has been done to revise the *Proposed Faculty Handbook Revision* (ver. Aug. 13, 2018) [hereinafter *August 13 Proposal*]. This document attempts to aid the conversation by providing language that incorporates the AAUP analysis into the proposed revision of the *August 13 Proposal*, in many instances.

This document is not an endorsement of any position taken by the AAUP. Rather, this document merely attempts to assist the Faculty Senate in considering the latest version of the *August 13 Proposal* in light of the AAUP analysis.

This document provides an executive summary that identifies major decision points. For each decision point, the body of the document first provides the unedited language of the *August 13 Proposal*, then the unedited language of the AAUP analysis, and then an edited version of the *August 13 Proposal* incorporating the AAUP analysis. In most instances, I have attempted to incorporate the AAUP language verbatim. For some decision points, I have not attempted to incorporate AAUP analysis.

My hope is that this will be a useful tool to facilitate discussion.

Best,
e. christi cunningham

Discussion Tool for AAUP Analysis

Executive Summary

The AAUP analysis contains roughly 18 decision points. A decision point, as identified in this document, is a point in the AAUP analysis that cites a provision in the previous draft of the proposed revision to the handbook and provides some critique or preferred language. (Although the AAUP analysis was based on an earlier version of the proposed revision, the difference did not impair its usefulness because the language highlighted by the AAUP was unmodified between versions.) Sometimes there are multiple decision points in one section of the *August 13 Proposal* and occasionally, the same decision point occurs in multiple locations in the *August 13 Proposal*.

Major Decision Points:

1. Academic Organization and Governance: Should the faculty handbook contain the principle that certain areas are primarily the responsibility of the faculty, and therefore the President and Board should concur with faculty judgment except in rare instances and for compelling reasons that must be stated in detail?
2. Academic Committee Structure: Instead of consulting with the chair of the faculty senate, should faculty representation on University, school, and department committees be determined by procedures established by the faculty?
3. Faculty Participation in Academic Planning: Should faculty participation in academic planning and budgeting be governed by the principle of faculty primary responsibility in certain areas?
4. Academic Freedom: Should a provision protecting faculty right to critique the administration be removed as part of academic freedom?
5. Types of Faculty Appointments: Should there be full-time faculty positions that are not eligible for tenure? And should there be full-time faculty positions in which faculty have served for more than 7 years and do not have tenure (e.g. non-tenured renewable)?
6. Reappointment of Temporary Faculty: Should temporary faculty have a right of appeal if their appointments are not renewed?
7. Notice of Non-Reappointment of Non-Tenured Faculty Members: Should full-time faculty in their second year of service receive at least six months notice of non-renewal?
8. Separation of Faculty Due to Financial Exigency: Should the definition of financial exigency include that no less drastic means is available? Should a committee composed of faculty participate in the determination of whether there is a financial exigency? Should tenured faculty who are separated due to financial exigency receive 1 year's severance pay? Should faculty separated due to financial exigency have a right of appeal regardless of whether other faculty are separated?

9. Grievable Matters: Should there be appeal procedures for faculty separated due to financial exigency?
10. Faculty, Tenure, Promotion and Evaluation: Should a tenure clock extension be available for “unforeseen circumstances”?
11. Disciplinary Matters: Should suspension due to a single incident require that the faculty member pose a threat of “immediate harm to the faculty,” rather than just a violation of law, for example? Should suspensions be with pay?
12. Written Reprimands: Should written reprimands be appealable to the Faculty Grievance Commission?
13. Burden of Proof for Major Sanctions: Should the burden of proof be on the administration for all disciplinary matters, not just dismissal? Should the administration’s burden of proof in faculty disciplinary matters be “clear and convincing evidence” rather than the “preponderance of the evidence?”
14. Grounds for Major Sanctions: Should grounds for major sanction be “related, directly and substantially, to the fitness of faculty members in their professional capacities as teachers or researchers” rather than also non-professional matters.
15. Statutory Discrimination: Are the handbook policies concerning statutorily prohibited discrimination appropriate?
16. Eligibility of Faculty Members to Initiate Grievances: Should temporary faculty have ability to grieve discipline before the Faculty Grievance Commission? Should sanction for misrepresentation, falsification of credentials, and admission of conviction of a felony be grievable?
17. Final Grievance Decision: Should the President’s decision concerning a major sanction be appealable to the Board of Trustees?
18. Handbook Revision Procedure: Must changes to the faculty handbook concerning the mission or matters concerning areas of primary faculty responsibility be submitted to the faculty for consultation through the faculty handbook revision procedure prior to being altered by the President or Board of Trustees?

I. Academic Organization and Governance

Proposed Handbook Revision

A2.1 Shared Governance

Shared governance is defined as the right and responsibility of faculty to seek early and meaningful engagement with the administration and the Board of Trustees in the development of policies and decisions that impact university-wide programs, the nature and quality of academic programs, faculty and student welfare, research and scholarship, and the responsiveness of Howard University to achieve its unique contemporary mission. Shared governance ensures the right of faculty to seek change and to participate in the governance of the University through direct interaction and dialogue with the administration and/or the Board of Trustees, as set forth in the Constitution of the Faculty Senate.

A2.2 The Role of the Board of Trustees and the President in Approving Academic Policies and Programs

Academic policies and programs of individual schools and colleges usually emanate from the committee or department level and are submitted for subsequent consideration by the school/college faculty. Following faculty consideration, the dean of the school/college shall prepare a recommendation and submit both the recommendation and the proposal to the Provost. Following the Provost's review, these and the Provost's recommendation shall be forwarded to the President for review and approval and for submission to the Board of Trustees for final action. The dean, the Provost and the President shall acknowledge receipt and consult with the appropriate school/college faculty with respect to their recommendations in a timely manner.

The President shall communicate decisions of the Board of Trustees related to academic policies and programs to the faculty and the University community in a timely manner.

AAUP Analysis

A2: Academic Organization and Governance

Widely-adopted standards of academic governance are set forth in the Statement on Government of Colleges and Universities, which was formulated by the AAUP jointly with the American Council on Education and the Association of Governing Boards of Universities and Colleges. The Statement identifies areas of primary responsibility of the faculty, which are "such fundamental areas as curriculum, subject matter and methods of instruction, research, faculty status, and those aspects of student life which relate to the educational process," and further specifies that in areas of faculty primacy "the governing board and president should...concur with the faculty judgment except in rare instances and for compelling reasons which should be stated in detail." The role of the faculty that is outlined in section A2.1 falls short of the principles of the Statement on Government, as it identifies that role in terms of "engagement," "interaction," and "dialogue." Similarly, the role of the administration and board outlined in section A2.2 does not

reflect the expectation of deference given to faculty recommendations in areas of faculty primacy. The same departure from AAUP-supported standards of academic governance can be found in section C2: Appointment, Reappointment and Search Procedures. That said, the faculty handbook refers to other documents, such as the bylaws of schools and colleges and the faculty senate constitution, for additional information about the role of the faculty in governance. These have not been reviewed for this analysis.

Incorporation of AAUP Analysis

A2.1 Shared Governance

Shared governance is defined as the right and responsibility of faculty to seek early and meaningful engagement with the administration and the Board of Trustees in the development of policies and decisions that impact university-wide programs and the responsiveness of Howard University to achieve its unique contemporary mission. In areas where the faculty have primary responsibility, such as the nature and quality of academic programs (including curriculum, subject matter and methods of instruction), faculty welfare (including faculty status), student welfare (including those aspects of student life which relate to the educational process), and research and scholarship, the governing board and president should concur with the faculty judgment except in rare instances and for compelling reasons which should be stated in detail. Shared governance ensures the right of faculty to seek change and to participate in the governance of the University through direct interaction and dialogue with the administration and/or the Board of Trustees, as set forth in the Constitution of the Faculty Senate.

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The President shall communicate decisions of the Board of Trustees related to academic policies and programs to the faculty and the University community in a timely manner. In areas where the faculty have primary responsibility, the governing board and president should concur with the faculty judgment except in rare instances and for compelling reasons which should be stated in detail.

(academic organization and governance continued)

Section C2: Appointment, Reappointment and Search Procedures

An outstanding faculty is critical to developing and maintaining academic excellence. The faculty is at the core of a University environment that demands the best from all of its participants. Additionally, a well-qualified and productive faculty helps attract other individuals, faculty members, students, staff and administrators to the University who will assist the University in achieving its mission.

The faculty has the responsibility of recommending appropriate action on such matters as faculty appointments, reappointments, promotions, the granting of tenure, and dismissals. The recommendations of the faculty for such matters are based on the fact that the faculty's judgment is central to general educational policy. Furthermore, scholars in a particular field or activity are expected to have the chief competence for judging the work of their colleagues. Such competence should be exercised before either adverse or favorable judgments are made. Consideration of these matters is to be by faculty action through established procedures. These actions shall be reviewed by the dean, the Provost and the President, and shall be submitted to the Board of Trustees for final action, when necessary.

When the designated decisional authority regarding initial faculty appointments (the Provost for all temporary appointments and the President for all tenured, probationary tenure-track, and non-tenured renewable term appointments) approves the appointment, the decisional authority will notify the applicant of the approval and enclose the employment contract specifying the rank, salary, full- or part-time status, term of the appointment, and academic unit(s) to which the person is assigned, and referencing the Faculty Handbook (including instructions for accessing it electronically). As noted below, in the course of recruiting new faculty members to the university, deans and other administrators may send offer letters to prospective faculty members that, besides the particulars noted above, make reference to such additional considerations as release from certain workload responsibilities, access to facilities and equipment, and financial support for travel or research assistance. All such offers of employment are contingent on final approval. Following final approval, the department chair or dean must also inform persons newly appointed to probationary tenure-track positions of the timeline for the pre-tenure review where applicable) and the promotion and tenure review, as well as the criteria and procedures that will be observed in evaluating him or her for reappointment, tenure, and/or promotion. Persons appointed to non-tenured renewable term appointments must similarly be informed of the timelines, procedures, and criteria that will govern recommendations for their reappointment or (where applicable) promotion.

AAUP Analysis

The same departure from AAUP-supported standards of academic governance can be found in section C2: Appointment, Reappointment and Search Procedures.

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The faculty has the responsibility for appropriate action on such matters as faculty appointments, reappointments, promotions, the granting of tenure, and dismissals. The faculty's primary responsibility for appointment, reappointment, and search procedures affecting the nature and quality of the academic program, faculty welfare, student welfare, and research and scholarship, are based on the fact that the faculty's judgment is central to general educational policy. Furthermore, scholars in a particular field or activity are expected to have the chief competence for judging the work of their colleagues. Such competence should be exercised before either adverse or favorable judgments are made. Consideration of these matters is to be by faculty action through established procedures. These actions shall be reviewed by the dean, the Provost and the President, and shall be submitted to the Board of Trustees for final action, when necessary. The governing board and president should concur with the faculty judgment except in rare instances and for compelling reasons which should be stated in detail.

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II. Academic Committee Structure

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Section A3: Academic Committee Structure

A3.1 University-Wide Committees

From time to time, the Presidents or the Provost may form various University-wide committees or task forces whose roles are distinct from, but do not conflict with, the committees that are part of the regular University governance structure, such as the Faculty Senate and faculties of the schools and colleges. Such committees may have an indefinite duration or they may be limited to a specific task and/or a specific period of time. Before creating such a body, the President or the Provost shall consult with the chair of the Faculty Senate regarding the appointment of faculty members to serve.

A3.2 School and College Committees

The functions, membership, and organization of all standing and ad hoc committees for each school/college shall be established and set forth in the school/college bylaws or by the dean, except as provided herein.

The following standing committees shall exist in each school/college: an Executive Committee; a Committee on Appointments, Promotions, and Tenure (APT); and a Curriculum Committee. The school/college Executive Committee shall be responsible for those matters delegated to it by the faculty. The school/college APT Committee shall make recommendations to the dean regarding appointments, promotions, and tenure of faculty members. The Curriculum Committee shall periodically review the school's/college's curricula and make recommendations to the dean regarding required enhancements. Other standing and ad hoc committees may be established by vote of the school/college faculty, by provisions set forth in the bylaws of the school/college, or at the discretion of the dean.

A3.3 Departmental Committees

Each department shall have, at a minimum, the following committees: an Executive Committee; a Committee on Appointments, Promotions and Tenure (APT); and a Curriculum Committee. The department APT Committee shall make recommendations regarding appointments, promotion, and tenure in accordance with the faculty handbook and the school/college bylaws. Other departmental standing and ad hoc committees may be established by faculty vote, by provisions set forth in the by-laws of the school/college, or at the discretion of the department chair.

AAUP Analysis

A3: Academic Committee Structure

Section A3.1 permits the administration to create university-wide committees and task forces and to appoint members to them after “consult[ing] with the chair of the Faculty Senate.” This mechanism of selection of faculty representatives is inconsistent with generally-observed principles of academic governance. The Statement on Government

observes that “faculty representatives should be selected by the faculty according to procedures determined by the faculty.” The mechanism of membership selection for both college-wide and departmental committees, which is the subject of the next two sections and which, in turn, refer the matter to the appropriate bylaws, should be in accord with the same principle. Again, those documents have not been reviewed for this analysis.

Incorporation of AAUP Analysis

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From time to time, the Presidents or the Provost may form various University-wide committees or task forces whose roles are distinct from, but do not conflict with, the committees that are part of the regular University governance structure, such as the Faculty Senate and faculties of the schools and colleges. Such committees may have an indefinite duration or they may be limited to a specific task and/or a specific period of time. Before creating such a body, the President or the Provost shall consult with the Faculty Senate such that faculty representatives should be selected by the faculty according to procedures determined by the faculty.

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III. Faculty Participation in Academic Planning

Proposed Handbook Revision

A4.2.1 Faculty Participation in Academic Planning

Faculty and administrators are partners in the shared responsibility for the academic and educational enterprise at Howard University. In this regard, there is joint responsibility to engage in ongoing processes that guide important decisions regarding academic priorities, academic restructuring, budget/resource allocation, and planning—including capital expenditures and allocation of physical facilities. Faculty shall participate in the planning process for their school/college to ensure the growth of the educational and scholarly potential of the University. The regular members of the faculty of a school/college shall have an opportunity to make recommendations on proposals concerning the creation, consolidation, or elimination of departments, institutes, or other academic or research units making up a part of that school/college. Deans shall consult with the faculty in matters relevant to the academic programs and administration of the unit and be guided by the principle of shared governance (see Sections A1.5.3 and A2.1).

Faculty shall be informed of decanal priorities, goals, and objectives at the start of the academic year, accompanied by budget summaries and resource allocations associated therewith. Faculty shall have an opportunity to offer advice and recommendations to the proposed plan. At the conclusion of each academic year, deans shall provide the faculty with a written report of activities, accomplishments, and impediments related to the original proposed goals and objectives.

AAUP Analysis

A4.2.1 Faculty Participation in Academic Planning

The AAUP's derivative statement on The Role of the Faculty in Budgetary and Salary Matters provides that the faculty's role in this area should depend on the degree of relationship of the budgetary matter to areas of faculty primacy, noting that budgetary decisions that directly affect areas of faculty primacy "should be made in concert with the faculty." The faculty role specified in section A4.2.1 appears to fall short of this provision. Further, this section provides that "the regular members of the faculty of a school/college shall have an opportunity to make recommendations on proposals concerning the creation, consolidation, or elimination of departments, institutes, or other academic or research units making up a part of that school/college," but it fails to recognize that these are in fact areas in which the faculty exercises primary responsibility.

Incorporation of AAUP Analysis

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Faculty and administrators are partners in the shared responsibility for the academic and educational enterprise at Howard University. In this regard, there is joint responsibility to engage in ongoing processes that guide important decisions regarding academic

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priorities, academic restructuring, budget/resource allocation, and planning—including capital expenditures and allocation of physical facilities. Faculty shall participate in the planning process for their school/college to ensure the growth of the educational and scholarly potential of the University. The regular members of the faculty of a school/college shall have an opportunity to make recommendations on proposals concerning such matters. Where the creation, consolidation, or elimination of departments, institutes, or other academic or research units making up a part of that school/college concern primary faculty responsibility, such as curriculum, subject matter and methods of instruction, research, faculty status, and those aspects of student life which relate to the educational process, the governing board and president should concur with the judgment of the regular members of the faculty except in rare instances and for compelling reasons which should be stated in detail. Deans shall consult with the faculty in matters relevant to the academic programs and administration of the unit and be guided by the principle of shared governance (see Sections A1.5.3 and A2.1).

Faculty shall be informed of decanal priorities, goals, and objectives at the start of the academic year, accompanied by budget summaries and resource allocations associated therewith. Faculty shall have an opportunity to offer advice and recommendations to the proposed plan to the extent that the proposed plan does not concern matters of primary faculty responsibility. Concerning the priorities, goals, objectives, and budgets for matters of primary faculty responsibility, the dean should concur with the judgment of the regular members of the faculty except in rare instances and for compelling reasons which should be stated in detail. At the conclusion of each academic year, deans shall provide the faculty with a written report of activities, accomplishments, and impediments related to the original proposed goals and objectives.

IV. Academic Freedom

Proposed Handbook Revision

B1.1 Academic Freedom and Responsibility

Faculty members are entitled to academic freedom in teaching, research, publication, scholarly activity, assembly, service, and in the generation and transmission of new knowledge.

Academic freedom is defined as follows:

- 1) freedom of inquiry, thought, expression, publication, and peaceable assembly;
- 2) the unrestricted exploration of subjects (including controversial questions), both on and off the campus, in a professionally responsible manner; and
- 3) expression and communication of the widest range of viewpoints, in accord with standards of research integrity, scholarly inquiry and professional ethics, free from internal or external interference or coercion.

Academic discourse frequently involves a strong expression of opinions, including discussion, deliberation, and debate.

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The responsibility for defining the particulars of academic freedom primarily lies with the faculty as a body, guided by national norms, such as the “1940 Statement of Principles on Academic Freedom and Tenure” issued by the American Association of University Professors. The exercise of academic freedom entails correlative duties of professional care when teaching, conducting research and scholarship, performing service, or otherwise acting as a member of the faculty.

Academic freedom in research is exercised in the pursuit of new knowledge, the publication of results, and in the generation of new concepts, theories, and hypotheses. In their exercise of academic freedom in research, faculty should be aware that they are subject to policies, regulations, and guidelines governing research that may be required by the University or by external entities such as government agencies or sponsors. Among these are the University’s policies regarding sponsored research, intellectual property, research involving human subjects, research involving animals, academic fraud, scientific misconduct, and hazardous materials. The University has policies on the disposition of intellectual property, which are found in the Howard University Intellectual Property Policy. Faculty should be mindful that the University may have, and may assert, ownership of intellectual property developed by faculty, staff and, in some cases, students. Faculty must be careful not to provide University intellectual property, or their associated rights, to third parties without written permission from the Howard University Intellectual Property Committee. In sponsorship agreements, the University will generally try to retain intellectual property rights, or obtain fair consideration for them.

Academic freedom in the classroom, at scholarly assemblies, or in other learning environments involves the discussion and/or transmission of knowledge and information by faculty to foster in students a mature independence of thought and expression. In these contexts, faculty should be careful matters introduced into their teaching have a legitimate educational purpose. Students are entitled to an atmosphere conducive to learning and to fairness and respect in all aspects of the teacher-student relationship. Thus, faculty members must ensure that their treatment of students complies with all University policies, rules and regulations, including those regarding equal opportunity, non-discrimination, harassment and mistreatment, and the University’s commitment to promoting the educational aspirations and achievements of all students.

Faculty members also have rights common to all citizens, free from institutional censorship or discipline for private activities, except insofar as such actions affect substantially their responsibilities to the University. At the same time, Howard University faculty members are obligated to be accurate, to exercise appropriate restraint, and to show respect for the opinions of others. Each faculty member has the right to criticize and seek alteration of institutional regulations and policies through appropriate means. However, faculty should remember that the public may judge their profession and the institution by their utterances and, therefore, should make clear when they are operating as individuals, rather than speaking on behalf of the University.

A faculty member’s exercise of academic freedom shall not affect his or her terms and conditions of employment, including appointment, reappointment, performance

evaluations, promotion, and tenure.

AAUP Analysis

Chapter B: Terms and Conditions of Faculty Employment

Section B1.1 contains a comprehensive definition of academic freedom that is longer than those found in many other faculty handbooks. The sentence “each faculty member has the right to criticize and seek alteration of institutional regulations and policies through appropriate means” in the penultimate paragraph seems to be misplaced, as it refers to academic freedom related to institutional governance, while the remaining paragraph is concerned with speech of faculty members in their role as citizens. In particular, the next sentence, beginning with “however,” does not seem to apply to speech related to institutional governance. For further information, see the Committee A Statement on Extramural Utterances, On the Relationship of Faculty Governance to Academic Freedom, and Protecting an Independent Faculty Voice: Academic Freedom after Garcetti v. Ceballos.

Incorporation of AAUP

No change incorporated.

V. Types of Faculty Appointments

Proposed Handbook Revision

Section C1: Types of Faculty Appointments

Faculty members at Howard University hold appointments in one of three broad categories: (1) tenured and probationary tenure-track faculty; (2) faculty serving on non-tenured renewable term appointments; and (3) temporary faculty. **[throughout section C there are references to these types of appointments.]**

AAUP Analysis

Chapter C: Types of Faculty Appointments

Section C1 describes the types of faculty appointments at Howard University as follows: “Faculty members at Howard University hold appointments in one of three broad categories: (1) tenured and probationary tenure-track faculty; (2) faculty serving on non-tenured renewable term appointments; and (3) temporary faculty.” Neither faculty serving in non-tenured renewable term appointments nor temporary faculty are eligible for tenure. However, the former may be reappointed without limit, while the latter may not “serve more than seven (7) years in full-time status.” The category of temporary faculty members includes both part-time and full-time faculty members.

These provisions are not consistent with the 1940 Statement of Principles on Academic Freedom and Tenure, which specifies that,

[a]fter the expiration of a probationary period, teachers or investigators should have permanent or continuous tenure, and their service should be terminated only for adequate cause ... or under extraordinary circumstances because of financial exigencies.

The 1940 Statement further specifies that “[b]eginning with appointment to the rank of full-time instructor or a higher rank, the probationary period should not exceed seven years...” The Association believes that all full-time faculty appointments with seven or fewer years of service should be probationary for tenure and that all full-time faculty appointments with more than seven years of service should carry the protections of tenure. (See also Regulation 1b of our Recommended Institutional Regulations on Academic Freedom and Tenure, which derives from the 1940 Statement and other foundational documents. Regulation 1b states, “With the exception of special appointments clearly limited to a brief association with the institution, . . . all full-time faculty appointments are of two kinds: (1) probationary appointments; (2) appointments with continuous tenure.”)

The argument of the 1940 Statement is essentially this: Excellence in teaching and research is necessary for the public good; academic freedom is required for excellence in teaching and research; and the protections of tenure are necessary to protect academic freedom. Academic freedom being a requisite condition for all who teach and conduct research, all full-time faculty members should either have tenure or be eligible for tenure. Furthermore, as the Recommended Institutional Regulations observes in footnote 14, “There should be no invidious distinctions between those who teach and/or conduct research in higher education, regardless of whether they hold full-time or part-time appointments or whether their appointments are tenured, tenure-track, or contingent.”

Nevertheless, over seventy percent of higher-education faculty members today are serving in what we call contingent appointments—i.e., either part time or full time but ineligible for tenure. The AAUP has issued a number of reports that address this problem. Our Contingent Appointments and the Academic Profession describes the detrimental effects of the use (and abuse) of contingent faculty on “the quality of student learning, . . . equity among academic colleagues, . . . the integrity of faculty work, and . . . academic freedom.” Our most recent report (2010) on the subject, *Tenure and Teaching-Intensive Appointments*, points to “[a] broad and growing front of research” demonstrating that “the system of permanently temporary faculty appointments has negative consequences for student learning” and recommends, among other solutions, converting non-tenure-track appointments to the tenure track.

Incorporation of AAUP Analysis

No change incorporated. The AAUP analysis acknowledges that 70% of university serve in contingent positions. Howard has long had Career positions and full-time non-tenure track positions. A decision to change that should not be made at this point in the context of revising the handbook.

VI. Reappointment of Temporary Faculty

Proposed Handbook Revision

C2.3.2 Reappointment of Temporary Faculty

Reappointment recommendations are usually initiated by the department chair, after consulting with the department APT Committee. If both the department chair and the department APT Committee decide not to recommend reappointment, no written recommendation will be generated and the matter is closed (subject to the notice of non-reappointment proviso in Section C2.4, immediately below). If either the chair or the department APT Committee recommends reappointment, both the chair's recommendation and the department APT Committee's recommendation are forwarded to the dean with appropriate documentation. The dean then obtains a recommendation from the school/college APT Committee, adds the dean's recommendation, and forwards the entire file to the Provost, whose decision is final.

In schools without departments, the school-wide APT committee initiates the recommendation to reappoint which is then forwarded to the dean, unless otherwise specified in the school's bylaws. If the recommendation is not to reappoint and the dean concurs, the matter is closed, provided that the applicant was timely notified of the decision not to reappoint. In all other cases, the dean will prepare a recommendation to accompany the APT committee's recommendation to the Provost for final decision.

AAUP Analysis

It is apparent from sections C2.3.2 and F3 that temporary faculty members do not have appeal rights when their appointments are not renewed, which is at odds with the relevant provisions of the Recommended Institutional Regulations (Regulations 2 and 13).

Incorporation of AAUP Analysis

No change incorporated.

VII. Notice of Non-Reappointment of Non-Tenured Faculty Members

C2.4 Standards for Notice of Non-Reappointment of Non-Tenured Faculty Members

Notice of non-reappointment of non-tenured faculty members must be provided as follows:

- 1) For probationary tenure-track faculty members on three-year contracts, at least 12 months (365 calendar days) prior to the expiration date of the current appointment.
- 2) For non-tenured renewable term faculty members, at least 12 months (365 calendar days) prior to the expiration date of the current appointment.
- 3) For full-time temporary faculty members, at least three (3) months (90 calendar days) prior to the date of termination of the current appointment following two (2) years of service.

Failure on the part of the University to provide timely notification of non-reappointment shall entitle the faculty member to a temporary appointment limited to one (1) academic year for probationary tenure-track and non-tenured renewable term faculty members and to (1) one semester for full-time temporary faculty members.

Late notice does not entitle the faculty member to tenure by default or to continued employment beyond what is necessary to observe the relevant notification requirement.

AAUP Analysis

Section C2.4, Standards for Notice of Non-Reappointment of Non-Tenured Faculty Members, provides the following guidelines: “For full-time temporary faculty members, at least three (3) months (90 calendar days) prior to the date of termination of the current appointment following two (2) years of service.” This provision appears to apply equally to full-time and part-time temporary faculty members and, in the case of full-time faculty members, is at odds with AAUP-supported standards. These are specified in Standards for Notice of Non-reappointment, which provides for the applicability of the following deadlines to all full-time faculty on renewable term appointments:

1. Not later than March 1 of the first academic year of service, if the appointment expires at the end of that year; or, if a one-year appointment terminates during an academic year, at least three months in advance of its termination.
2. Not later than December 15 of the second academic year of service, if the appointment expires after the end of that year; or, if an initial two-year appointment terminates during an academic year, at least six months in advance of its termination.

3. At least twelve months before the expiration of an appointment after two or more years in the institution.

Incorporation of AAUP Analysis

C2.4 Standards for Notice of Non-Reappointment of Non-Tenured Faculty Members

Notice of non-reappointment of non-tenured faculty members must be provided as follows:

- 1) For probationary tenure-track faculty members on three-year contracts, at least 12 months (365 calendar days) prior to the expiration date of the current appointment.
- 2) For non-tenured renewable term faculty members, at least 12 months (365 calendar days) prior to the expiration date of the current appointment.
- 3) For full-time temporary faculty members, not later than December 15 of the second academic year of service, if the appointment expires after the end of that year; or, if an initial two-year appointment terminates during an academic year, at least six months in advance of its termination.

Failure on the part of the University to provide timely notification of non-reappointment shall entitle the faculty member to a temporary appointment limited to one (1) academic year for probationary tenure-track and non-tenured renewable term faculty members and to (1) one semester for full-time temporary faculty members.

Late notice does not entitle the faculty member to tenure by default or to continued employment beyond what is necessary to observe the relevant notification requirement.

VIII. Separation of Faculty Due to Financial Exigency

Proposed Handbook Revision

Section C5: Separation of Faculty Due to Financial Exigency

A financial exigency is defined as an imminent fiscal crisis that will result in grave or irreparable harm to the quality of educational or research programs at the University, and which requires termination of faculty appointments to alleviate it. A financial exigency shall not be declared merely as an opportunity to implement academic or programmatic reform.

C5.1 Declaration of a State of Financial Exigency

A financial exigency will be declared by a majority of the members of the Board of Trustees of the University, in accordance with the policies and procedures recommended

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by the President and approved by the Board of Trustees.

C5.2 Development of a Plan of Action

Upon the Board's declaration of a financial exigency, the President will appoint a financial exigency advisory committee, which will include members selected by the Faculty Senate, to assist with the development of a plan of action to address the exigency. The President shall determine the composition and specific charge of the committee after consultation with the Chair of the Faculty Senate.

The following principles will be adhered to in the development of the financial exigency plan of action:

- 1) The responsibility of the faculty in matters of general educational policy will be recognized and consideration will be given to faculty judgments regarding the best response to the exigency.
- 2) No faculty member with tenure will be terminated unless all faculty members without tenure in the academic department, unit or program designated for retrenchment have been terminated.

The President shall present a plan of action to the University community, the Faculty Senate, and the Board of Trustees in a timely manner.

C5.3 Notification to Faculty Members

All tenured faculty members terminated for reasons of financial exigency will be terminated at the end of the academic year in which termination notice is given. To the extent that termination notice of less than 120 calendar days is given, severance will be paid in order to ensure that the terminated faculty member shall receive a total of 120 days of pay after receipt of the notice of termination. The written notice of termination must include a statement of the faculty member's right to respond and/or to present his or her case to the Faculty Grievance Commission.

C5.4 Rights of Tenured Faculty Members in the Event of Financial Exigency

Before terminating the appointment of a tenured faculty member for reasons of financial exigency, every reasonable effort shall be made to find another suitable position for the faculty member within the University. Departmental transfers may be made, if mutually acceptable, and the President (or the President's designee) will work with the affected parties to achieve an agreeable accommodation. Faculty retraining may be provided if such retraining will prepare the faculty member to perform duties associated with another University position within a reasonable period of time. Faculty members meeting age and service requirements, as determined by the Board of Trustees, will be given the option to retire early. The appropriate Faculty Senate Committee will monitor the University's efforts in seeking to find suitable positions within the University for displaced faculty members.

A tenured faculty member terminated for reasons of financial exigency will be allowed to

participate in the University group health insurance program, consistent with the University's insurance plan, for up to 18 calendar months following the date of termination, unless a different period is required by law. The faculty member is entitled to other rights and benefits of terminated employees as may be specified by the Board of Trustees.

C5.5 Other Rights Pertaining to All Faculty in the Event of Financial Exigency

Faculty members terminated for reasons of financial exigency will have the opportunity to receive counseling services regarding employment opportunities outside the University. If a program that has undergone significant reduction or elimination as a result of financial exigency is reinstated or strengthened by reinstated full-time employees within three (3) years after termination of the state of financial exigency, tenured faculty terminated as a result of said reduction or termination will have the right to be reinstated, if positions are available, before new faculty are hired.

Under established policies and procedures, a faculty member whose appointment is terminated for reasons of financial exigency has the right to appeal to the FGC in cases where other faculty members in the same department are retained.

C5.6 Financial Exigency Sunset Provisions

A declaration of financial exigency is valid for a period fixed by the Board of Trustees. In any case, after a period of one (1) year from the date of declaration of a financial exigency, the status of the University should be reviewed by both the President and the financial exigency advisory committee, and a report should be issued to the Board of Trustees containing recommendations for appropriate action.

AAUP Analysis

Multiple elements of section C5: Separation of Faculty Due to Financial Exigency are at odds with Association-supported standards regarding termination of faculty appointments because of financial exigency. These include the definition of a financial exigency, the role of the faculty in declaring a financial exigency, and provisions for severance pay. Regulation 4c of the Recommended Institutional Regulations contains the relevant Association policies.

Regarding the definition of "financial exigency," Regulation 4c(1) states that it is "a severe financial crisis that fundamentally compromises the academic integrity of the institution as a whole and that cannot be alleviated by less drastic means." Regarding the role of the faculty in declaring a financial exigency, the same regulation states, "As a first step, there should be an elected faculty governance body, or a body designated by a collective bargaining agreement, that participates in the decision that a condition of financial exigency exists or is imminent and that all feasible alternatives to termination of appointments have been pursued." When the appointments of tenured faculty members are terminated, Regulation 8 specifies that a year's salary be given as severance. In addition to the deficiencies enumerated above, it is particularly noteworthy that appeal

rights are limited to instances in which “other faculty members in the same department are retained.”

Incorporation of AAUP Analysis

Section C5: Separation of Faculty Due to Financial Exigency

A financial exigency is defined as a severe financial crisis that fundamentally compromises the academic integrity of the institution as a whole, which requires termination of faculty appointments to alleviate it, and that cannot be alleviated by less drastic means. A financial exigency shall not be declared merely as an opportunity to implement academic or programmatic reform.

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C5.1 Declaration of a State of Financial Exigency

As a first step, there should be an elected faculty governance body, or a body designated by a collective bargaining agreement, that participates in the decision that a condition of financial exigency exists or is imminent and that all feasible alternatives to termination of appointments have been pursued. A financial exigency will be declared by a majority of the members of the Board of Trustees of the University, in accordance with the policies and procedures recommended by the President and approved by the Board of Trustees.

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Comment [1]: AAUP analysis does not provide guidance for what happens after first step, time frame, or relationship between elected faculty governance body and Board of Trustees. Does body make a recommendation to BoT? How does/should BoT treat the recommendation? Mandatory? Discretionary? In consultation? How much time is recommended for this process?

C5.2 Development of a Plan of Action

Upon the Board's declaration of a financial exigency, the President will appoint a financial exigency advisory committee, which will include members selected by the Faculty Senate, to assist with the development of a plan of action to address the exigency. The President shall determine the composition and specific charge of the committee after consultation with the Faculty Senate such that faculty representatives should be selected by the faculty according to procedures determined by the faculty.

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The following principles will be adhered to in the development of the financial exigency plan of action:

- 1) The responsibility of the faculty in matters of general educational policy will be recognized and consideration will be given to faculty judgments regarding the best response to the exigency.

- 2) No faculty member with tenure will be terminated unless all faculty members without tenure in the academic department, unit or program designated for retrenchment have been terminated.

The President shall present a plan of action to the University community, the Faculty Senate, and the Board of Trustees in a timely manner.

C5.3 Notification to Faculty Members

All tenured faculty members terminated for reasons of financial exigency will be terminated at the end of the academic year in which termination notice is given. To the extent that termination notice of less than 120 calendar days is given, severance will be

paid in order to ensure that the terminated faculty member shall receive a total of 120 days of pay after receipt of the notice of termination. The written notice of termination must include a statement of the faculty member's right to respond and/or to present his or her case to the Faculty Grievance Commission.

C5.4 Rights of Tenured Faculty Members in the Event of Financial Exigency

Before terminating the appointment of a tenured faculty member for reasons of financial exigency, every reasonable effort shall be made to find another suitable position for the faculty member within the University. Departmental transfers may be made, if mutually acceptable, and the President (or the President's designee) will work with the affected parties to achieve an agreeable accommodation. Faculty retraining may be provided if such retraining will prepare the faculty member to perform duties associated with another University position within a reasonable period of time. Faculty members meeting age and service requirements, as determined by the Board of Trustees, will be given the option to retire early. The appropriate Faculty Senate Committee will monitor the University's efforts in seeking to find suitable positions within the University for displaced faculty members.

A tenured faculty member terminated for reasons of financial exigency shall receive one year's severance pay and will be allowed to participate in the University group health insurance program, consistent with the University's insurance plan, for up to 18 calendar months following the date of termination, unless a different period is required by law. The faculty member is entitled to other rights and benefits of terminated employees as may be specified by the Board of Trustees.

C5.5 Other Rights Pertaining to All Faculty in the Event of Financial Exigency

Faculty members terminated for reasons of financial exigency will have the opportunity to receive counseling services regarding employment opportunities outside the University. If a program that has undergone significant reduction or elimination as a result of financial exigency is reinstated or strengthened by reinstated full-time employees within three (3) years after termination of the state of financial exigency, tenured faculty terminated as a result of said reduction or termination will have the right to be reinstated, if positions are available, before new faculty are hired.

Under established policies and procedures, a faculty member whose appointment is terminated for reasons of financial exigency has the right to appeal to the FGC.

C5.6 Financial Exigency Sunset Provisions

A declaration of financial exigency is valid for a period fixed by the Board of Trustees. In any case, after a period of one (1) year from the date of declaration of a financial exigency, the status of the University should be reviewed by both the President and the financial exigency advisory committee, and a report should be issued to the Board of Trustees containing recommendations for appropriate action.

IX. Section F1: Grievable Matters

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Chapter F: Faculty Grievances, the Faculty Grievance Commission (FGC), and FGC Procedures

Section F1: Grievable Matters

A grievance is a complaint alleging that a disciplinary action (or other adverse action) has been taken that has the potential to affect the faculty member's appointment status or the terms and conditions of employment or to abridge another right that all faculty members enjoy. The processes described below address four kinds of grievances: (1) appeals of recommended major disciplinary sanctions; (2) appeals of negative recommendations for reappointment, tenure, and/or promotion; (3) grievances against another faculty member; or (4) grievances against administrators in cases that do not involve disciplinary actions.

AAUP Analysis

Further, this specific appeal right is not identified in section section F1: Grievable Matters, and thus the handbook is silent on further procedures for this appeal. Regarding the right to appeal, Regulation 4c(3) provides:

If the administration issues notice to a particular faculty member of an intention to terminate the appointment because of financial exigency, the faculty member will have the right to a full hearing before a faculty committee. The hearing need not conform in all respects with a proceeding conducted pursuant to Regulation 5 [on dismissal for cause], but the essentials of an on-the-record adjudicative hearing will be observed. The issues in this hearing may include the following:

- (i) The existence and extent of the condition of financial exigency. The burden will rest on the administration to prove the existence and extent of the condition. The findings of a faculty committee in a previous proceeding involving the same issue may be introduced.
- (ii) The validity of the educational judgments and the criteria for identification for termination; but the recommendations of a faculty body on these matters will be considered presumptively valid.
- (iii) Whether the criteria are being properly applied in the individual case.

For further information about the Association's position on these issues, see *On the Role of the Faculty in Conditions of Financial Exigency*.

Incorporation of AAUP Analysis

Chapter F: Faculty Grievances, the Faculty Grievance Commission (FGC), and FGC Procedures

Section F1: Grievable Matters

A grievance is a complaint alleging that a disciplinary action (or other adverse action) has been taken that has the potential to affect the faculty member's appointment status or the terms and conditions of employment or to abridge another right that all faculty members enjoy. The processes described below address four kinds of grievances: (1) appeals of recommended major disciplinary sanctions; (2) appeals of negative recommendations for reappointment, tenure, and/or promotion; (3) grievances against another faculty member; (4) grievances against administrators in cases that do not involve disciplinary actions; or (5) appeals of termination due to financial exigency.

[The following procedures would be added]

Section F6: Procedures Governing Grievances Involving Termination of Faculty Due to Financial Exigency

If the administration issues notice to a particular faculty member of an intention to terminate the appointment because of financial exigency, the faculty member will have the right to a full hearing before a faculty committee. The hearing need not conform in all respects with a proceeding conducted pursuant to Section F2 [on dismissal for cause], but the essentials of an on-the-record adjudicative hearing will be observed. The issues in this hearing may include the following:

- (i) The existence and extent of the condition of financial exigency. The burden will rest on the administration to prove the existence and extent of the condition. The findings of a faculty committee in a previous proceeding involving the same issue may be introduced.
- (ii) The validity of the educational judgments and the criteria for identification for termination; but the recommendations of a faculty body on these matters will be considered presumptively valid.
- (iii) Whether the criteria are being properly applied in the individual case.

X. Faculty, Tenure, Promotion and Evaluation

Proposed Handbook Revision

D2.3 Tenure Clock Extensions

Under normal circumstances, the maximum probationary period for Assistant Professors is seven years (7) from the start of the tenure-track appointment, with the pre-tenure review in the third year and the mandatory review for tenure and promotion occurring in

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the sixth year. The maximum probationary period for Associate Professors is five (5) years, with the mandatory review for tenure in the fourth year. In certain circumstances, however, the tenure clock may be stopped and an extension may be granted beyond the customary maximum probationary periods.

Probationary tenure-track faculty members may request a one-year stoppage of the tenure clock for life events that may significantly interfere with their ability to achieve promotion and/ or tenure within the conventional time frames. Such life events include, but are not limited to, the following:

- 1) The addition of a child into the faculty member's household. If both parents are probationary faculty members, each is eligible for a one-year tenure-clock extension;
- 2) A serious health condition (as defined in the Federal and District of Columbia Family and Medical Leave Acts) of the faculty member, or of a domestic partner or family member for whom the faculty member acts as the primary caregiver;
- 3) The death of a parent, child, spouse, or domestic partner;
- 4) Active military service during the period of deployment;
- 5) Unforeseen circumstances that adversely affect the faculty member's ability to conduct scholarly work or fulfill other faculty responsibilities.

AAUP Analysis

Chapter D: Faculty Tenure, Promotion and Evaluation

According to a July 5, 2018, memorandum by Provost Anthony K. Wutoh, language on extending the tenure clock in section D2.3 is newly added to this proposed edition of the faculty handbook. While the provisions in this section are generally consistent with Association recommendations, the inclusion of any "unforeseen circumstances that adversely affect the faculty member's ability to conduct scholarly work or fulfill other faculty responsibilities" as a reason for extending the tenure clock in addition to those already included would appear to go beyond what the Association recommends. It is important to keep in mind that extensions to the probationary period should not be granted solely to allow a faculty member to complete a project or to improve an academic record. Such a practice is contrary to what is meant by maximum probation and may tempt institutions to resort to such a step in cases in which it is difficult to reach a clear decision. The result would be a general erosion of the concept of probation and tenure.

Incorporation of AAUP Analysis

No change recommended.

XI. Disciplinary Matters

Proposed Handbook Revision

Section E1: Types of Disciplinary Sanctions

Disciplinary actions against a faculty member may include written reprimands, which may also require satisfying the terms of a corrective action plan, and the major sanctions of reduction in pay or rank, removal of teaching responsibilities, revocation of tenure, suspension (with or without pay), and termination for just cause.

As a general rule, the principle of graduated discipline shall apply, with the disciplinary action commensurate with the behavior. Written reprimands attempt to correct objectionable behavior without otherwise affecting the faculty member's rank, status, or the terms and conditions of employment. Major sanctions involve actions that may affect the faculty member's rank, status, or the terms and conditions of employment.

A single incident involving a serious violation of University policies or procedures, a violation of local, state or federal law, or behavior that suggests the faculty member may pose a risk to persons or property, or may expose the University to immediate legal liability, may warrant an immediate suspension pending further investigation and a formal recommendation. In these cases, the suspension may be with or without pay.

AAUP Analysis

Several of the policies in Chapter E are inconsistent with the principles outlined above. Suspension pending a hearing is permitted, according to section E1 and may be based on "a single incident involving a serious violation of University policies or procedures, a violation of local, state or federal law, or behavior that suggests the faculty member may pose a risk to persons or property, or may expose the University to immediate legal liability," which goes beyond the standard of a threat of "immediate harm to the faculty member or others." There is no provision for consultation with a faculty body. The section further provides that "the suspension may be with or without pay." The Association's position is that the suspension ought to be with pay.

Incorporation of AAUP Analysis

Section E1: Types of Disciplinary Sanctions

Disciplinary actions against a faculty member may include written reprimands, which may also require satisfying the terms of a corrective action plan, and the major sanctions of reduction in pay or rank, removal of teaching responsibilities, revocation of tenure, suspension (with or without pay), and termination for just cause.

As a general rule, the principle of graduated discipline shall apply, with the disciplinary action commensurate with the behavior. Written reprimands attempt to correct

objectionable behavior without otherwise affecting the faculty member's rank, status, or the terms and conditions of employment. Major sanctions involve actions that may affect the faculty member's rank, status, or the terms and conditions of employment.

A single incident involving a threat of immediate harm to the faculty member or others may warrant an immediate suspension pending further investigation and a formal recommendation. In these cases, the suspension shall be with pay.

XII. Written Reprimands

Proposed Handbook Revision

Section E2: Written Reprimands

If the allegation brought to the attention of the administrator of an academic unit involves neglect of faculty responsibilities or violation of university policies or one that was the subject of previous charges, the administrator may issue a written reprimand. The administrator will notify the faculty member of the charge(s) and the proposed sanction and provide an opportunity for discussion and, if possible, resolution. The faculty member may, but is not required to, request that the Executive Committee review the matter and make a recommendation to the administrator before the reprimand is issued. If the sanction involves a corrective action plan, requiring participation in workshops or other appropriate professional development activities to achieve specifically stated goals and objectives, the notice will specify a timeline for completion and any other terms and conditions that apply. At the faculty member's request, the administrator will meet to discuss the proposed plan. The faculty member may be accompanied by another faculty member or by the Faculty Ombudsperson. If the sanction involves a letter of reprimand, the administrator will meet with the faculty member to discuss its contents before issuing it.

A faculty member who receives a written reprimand may, within two (2) weeks from receipt of the communication, submit a written request for reconsideration. If the faculty member has not previously sought review of that matter by the Executive Committee, the faculty member may, but is not required to, request that the Executive Committee review the matter and include a recommendation to be considered by the administrator. If the administrator decides to let the reprimand stand, the faculty member may request review by the next higher administrative authority, who will have two (2) weeks to make a decision and inform the faculty member and the relevant administrator in writing. The decision of the administrator who hears the appeal is final, and is not subject to grievance to the Faculty Grievance Commission.

AAUP Analysis

Section E2 exempts minor sanctions from appeal to the Faculty Grievance Commission.

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Incorporation of AAUP Analysis

No change recommended. Minor sanctions procedure is new and more protection than faculty had under 1993. Appeal of minor sanction to FGC could impair ability of FGC to handle major sanctions and other matters.

XIII. Burden of Proof for Major Sanctions

Proposed Handbook Revision

Section E3: Major Sanctions

[. . .]

The following procedures shall be observed:

1) A recommendation to impose a major sanction will normally be initiated by the dean of the unit in which the faculty member's primary appointment resides, after consultation with the department chair and the department Executive Committee. In schools that do not contain departments, the recommendation may be initiated by the dean of the unit in which the faculty member's primary appointment resides, after consultation with the associate dean for academic affairs (or other appropriate administrator) and an appropriate faculty committee. However, the Provost or other appropriate administrator may initiate the recommendation. In cases involving allegations of bullying or retaliation by an administrator who is also a member of the faculty, the complaining faculty member may initiate a complaint to the next level supervisor of the administrator against whom the allegations are made. In any case involving dismissal for cause, the burden of proof that just cause exists shall be on the university. Proof shall be by the preponderance of the evidence on the record as a whole.

AAUP Analysis

According to section E3, in hearings concerning major sanctions, the burden of proof is on the administration only in dismissal proceedings, but not in cases involving other major sanctions. The cited standard of proof here and in section F1.2.3 is the "preponderance of the evidence" standard, which is weaker than the "clear and convincing" evidence standard, cited above. Thus, both policies on major and minor sanctions are at odds with Association-supported procedural standards.

Incorporation of AAUP Analysis

Section E3: Major Sanctions

[. . .]

The following procedures shall be observed:

1) A recommendation to impose a major sanction will normally be initiated by the dean of the unit in which the faculty member's primary appointment resides, after consultation with the department chair and the department Executive Committee. In schools that do not contain departments, the recommendation may be initiated by the dean of the unit in which the faculty member's primary appointment resides, after consultation with the associate dean for academic affairs (or other appropriate administrator) and an appropriate faculty committee. However, the Provost or other appropriate administrator may initiate the recommendation. In cases involving allegations of bullying or retaliation by an administrator who is also a member of the faculty, the complaining faculty member may initiate a complaint to the next level supervisor of the administrator against whom the allegations are made. In any case involving a major sanction, the burden of proof that just cause exists shall be on the university. Proof shall be by clear and convincing evidence on the record as a whole.

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XIV. Grounds for Major Sanctions

Proposed Handbook Revision

Section E3: Major Sanctions

In light of the professional consequences, a recommendation to impose a major sanction is initiated by a dean or by the Provost. Except in the serious cases that justify immediate suspension, a recommendation to impose a major sanction shall be preceded by discussions between the faculty member and the appropriate academic administrator(s) looking toward a resolution. The faculty member may be accompanied by another faculty member or by the Faculty Ombudsperson. The President is the final decisional authority regarding the imposition of a major sanction.

The following grounds may lead to a recommendation for a major sanction:

AAUP Analysis

The grounds for imposition of major sanctions, including dismissal, enumerated in section E3 would benefit from a recognition that they should be "related, directly and substantially, to the fitness of faculty members in their professional capacities as teachers or researchers," as Regulation 5a specifies. While none of them strike me as outside of the norm of what most reputable institutions of higher education include in institutional regulations, without such a recognition, they could be invoked to penalize private

behavior that has no relation to the professional fitness of a faculty member.

Incorporation of AAUP Analysis

Section E3: Major Sanctions

In light of the professional consequences, a recommendation to impose a major sanction is initiated by a dean or by the Provost. Except in the serious cases that justify immediate suspension, a recommendation to impose a major sanction shall be preceded by discussions between the faculty member and the appropriate academic administrator(s) looking toward a resolution. The faculty member may be accompanied by another faculty member or by the Faculty Ombudsperson. The President is the final decisional authority regarding the imposition of a major sanction.

The following grounds may lead to a recommendation for a major sanction if they are related, directly and substantially, to the fitness of faculty members in their professional capacities as teachers or researchers:

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XV. Statutory Discrimination

Proposed Handbook Revision

Chapter E: Disciplinary Matters

The provisions of this chapter of the Faculty Handbook enumerate the grounds and procedures for disciplining faculty, including administrators who hold faculty positions. They provide notice to members of the University community of the basis for disciplining faculty and a process for resolving such matters that is intended to facilitate clear communication and graduated opportunities for correction and improvement. These provisions also provide a system for the timely resolution of disciplinary matters in order to facilitate the work and community of the University.

When an administrator receives information alleging that a faculty member, who the administrators supervises, failed to perform assigned duties, violated a University policy, or engaged in conduct that interferes with the effective operation of the unit or the university, the administrator should first speak with the faculty member to determine the veracity of the charge and its seriousness. However, in cases that involve alleged violations of the University's Title VII (Employee) Policy Against Sexual Harassment in the Workplace and/or Title IX (Student) Policy on Prohibited Sexual Harassment and Gender-Based Discrimination in Education Programs and Activities, the procedures for disciplinary action stated in the University's Title VII and Title IX policies, up to and including suspension or termination, are followed instead of the procedures described in this section. The administrator is required to make the appropriate referral of such cases in a manner specified in the relevant policy.

AAUP Analysis

This chapter observes that “alleged violations of the University’s Title VII (Employee) Policy Against Sexual Harassment in the Workplace and/or Title IX (Student) Policy on Prohibited Sexual Harassment and Gender-Based Discrimination in Education Programs and Activities, the procedures for disciplinary action stated in the University’s Title VII and Title IX policies, up to and including suspension or termination, are followed instead of the procedures described in this section.” I have not reviewed the cited policies and thus cannot comment on their adherence to Association standards.

Incorporation of AAUP Analysis

No change incorporated.

XVI. Eligibility of Faculty Members to Initiate Grievances

Proposed Handbook Revision

F1.1 Eligibility of Faculty Members to Initiate Grievances

The grievance process described here is available to full-time tenured and probationary tenure-track faculty members and faculty in one of the Board-approved categories of non-tenured renewable term appointments.

The following categories of faculty employees may not participate in the University’s faculty grievance process:

- 1) Administrative officers who wish to contest actions affecting the terms and conditions of their administrative positions. However, faculty members serving as administrative officers may utilize the grievance procedures if an action arises while they are serving as a regular member of the faculty and their position as a regular member of the faculty is affected by the action they seek to grieve;
- 2) Temporary faculty (whether full- or part-time).

For allegations that a faculty member has violated the University’s Title VII (Employee) Policy Against Sexual Harassment in the Workplace, and/or Title IX (Student) Policy on Prohibited Sexual Harassment and Gender-Based Discrimination in Education Programs and Activities, the procedures in those policies for disciplinary action, up to and including suspension or termination, are followed instead of the procedures described in this section.

For sanctions imposed as a result of falsification or misrepresentation of credentials or experience, or admission or conviction of a felony, there shall be no grievance right.

AAUP Analysis

As noted above, temporary faculty members do not have appeals rights, but section F1.1 further excludes temporary faculty members from having the access to the grievance process, which is at odds with Association-supported standards. This section further observes that “for sanctions imposed as a result of falsification or misrepresentation of credentials or experience, or admission or conviction of a felony, there shall be no grievance right.” The Association does not recognize sanctions for certain kinds of misconduct as being exempt from academic due process.

Incorporation of AAUP Analysis

F1.1 Eligibility of Faculty Members to Initiate Grievances

The grievance process described here is available to full-time tenured and probationary tenure-track faculty members and faculty in one of the Board-approved categories of non-tenured renewable term appointments.

Administrative officers who wish to contest actions affecting the terms and conditions of their administrative positions may not participate in the University’s faculty grievance process. However, faculty members serving as administrative officers may utilize the grievance procedures if an action arises while they are serving as a regular member of the faculty and their position as a regular member of the faculty is affected by the action they seek to grieve.

For allegations that a faculty member has violated the University’s Title VII (Employee) Policy Against Sexual Harassment in the Workplace, and/or Title IX (Student) Policy on Prohibited Sexual Harassment and Gender-Based Discrimination in Education Programs and Activities, the procedures in those policies for disciplinary action, up to and including suspension or termination, are followed instead of the procedures described in this section.

Sanctions imposed as a result of falsification or misrepresentation of credentials or experience, or admission or conviction of a felony shall be grievable as a major sanction.

XVII. Final Grievance Decision

Proposed Handbook Revision

F2.3.5 Final Decision

The President's decision will be communicated, in writing, to the FGC Chair, the Provost, the grievant, and the respondent within thirty (30) business days of receiving the recommendation from the FGC. Whether or not the President imposes the recommended sanction, the seriousness of all disciplinary cases that result in a recommendation for a major sanction warrants that the President will provide a full explanation of his or her

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decision.

If the final decision supports the imposition of a major sanction, the President will, in a separate communication, notify the grievant, the respondent, and the Provost, informing him or her of the sanction and the effective date(s). In cases wherein the recommended sanction was termination, the President may impose a lesser sanction; however, if the President elects to impose a lesser sanction, the President may not impose a sanction greater than that recommended by the FGC. The President's decision is not subject to further grievance to the FGC.

AAUP Analysis

Section F2.3.5, Final Decision, provides as follows: "In cases wherein the recommended sanction was termination, the President may impose a lesser sanction; however, if the President elects to impose a lesser sanction, the President may not impose a sanction greater than that recommended by the FGC [Faculty Grievance Commission]." The second part of this sentence is unclear in that it is silent on whether the president may ever impose a sanction greater than that recommended by the FGC. It seems to suggest that the president may impose a greater sanction, unless he or she wishes to impose a lesser sanction at the same time, but it is unclear under what circumstances that would ever happen. Perhaps this sentence is the result of an editing infelicity.

Section F2.3.5 further provides that "the President's decision is final." Association-supported procedures recommend the availability of a final appeal to the governing board.

Incorporation of AAUP Analysis

F2.3.5 Final Decision

The President's decision will be communicated, in writing, to the FGC Chair, the Provost, the grievant, and the respondent within thirty (30) business days of receiving the recommendation from the FGC. Whether or not the President imposes the recommended sanction, the seriousness of all disciplinary cases that result in a recommendation for a major sanction warrants that the President will provide a full explanation of his or her decision.

If the final decision supports the imposition of a major sanction, the President will, in a separate communication, notify the grievant, the respondent, and the Provost, informing him or her of the sanction and the effective date(s). In cases wherein the recommended sanction was termination, the President may impose a lesser sanction. The President's decision is not subject to further grievance to the FGC, but in the case of termination, is appealable to the Board of Trustees.

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XVIII. Handbook Revision Procedure

Proposed Handbook Revision

Section G1: Revisions to Chapter A and any Appendix

At any time, information contained in Chapter A, except A2.2, A2.5, A2.6, A2.7, A3.1, A4.2.1, A4.2.2, A4.3.4, and A4.3.7 may be amended by the President or Board of Trustees or through an administrative update, as needed.

AAUP Analysis

Chapter G: Revising or Amending the Faculty Handbook

This chapter observes that “at any time, information contained in Chapter A, except A2.2, A2.5, A2.6, A2.7, A3.1, A4.2.1, A4.2.2, A4.3.4, and A4.3.7 may be amended by the President or Board of Trustees or through an administrative update, as needed.” The sections that are included in this provision include, among other things, section A1.1 Mission. The Association holds that unilateral changes to the mission of an institution of higher education should not be made with meaningful participation of the faculty. Without considering each of the sections included in this provision in turn, it may be sufficient to point out that the Association holds that faculty consultation, depending on the relationship to areas of faculty primacy, should be sought in all changes to institutional regulations.

Incorporation of AAUP Analysis

Section G1: Revisions to Chapter A and any Appendix

At any time, information contained in Chapter A, except [A1.1](#), A2.2, A2.5, A2.6, A2.7, A3.1, A4.2.1, A4.2.2, A4.3.4, and A4.3.7 may be amended by the President or Board of Trustees or through an administrative update, as needed. [However, to the extent that a revision to Chapter A concerns an area related to faculty primary responsibilities \[see \[A2.1 Shared Governance\]\(#\)\], the President and/or Board of Trustees should consult with the faculty, including through the Faculty Senate.](#)