

FORMAL COMPLAINT

TO: The Middle State Commission on Higher Education

FROM: The Steering Committee of the Howard University Faculty Senate

SUBJECT: The Noncompliance of the Board of Trustees with Section 2.9 of the *1993 Howard University Faculty Handbook*, “Procedure for Revision of the Faculty Handbook”

DATE: October 25, 2020

The Howard University Faculty Senate has significant concerns about both the process through which the *1993 Howard University Faculty Handbook (1993 Handbook)* was revised and the substantive changes that have resulted from the revision process.

The Provost on June 10, 2019 in a letter to the Howard University Faculty stated that the revised *2019 Howard University Faculty Handbook (2019 Handbook)* “is a document developed by the Faculty and Administration for the purpose of... protecting academic freedom and faculty rights and providing a framework for shared governance...”

We strongly disagree. The unilateral process by which the *1993 Handbook* was revised by the Board of Trustees demonstrates a blatant disregard for the clearly defined procedures for amending the Handbook (as outlined in the *1993 Handbook*). That process requires faculty review of any proposed changes. This required faculty review did **not** occur.

Furthermore, the revised *2019 Handbook* severely and deliberately weakens the rights of faculty members at Howard University, especially as it pertains to tenure and the rights of faculty during financial exigencies.

Procedural Issues and Concerns

The process to revise the *1993 Handbook* was controlled by Section 2.9 of the *1993 Handbook*, “Procedure for Revision of the Faculty Handbook.” Specifically, Section 2.9.2.1 established the requirement that the Faculty Senate be involved in the consideration of **any** proposal to revise the Handbook:

“Wherever proposals originate, they will be considered by the Faculty Handbook Committee of the Faculty Senate.”

The process to revise the *1993 Handbook* began in Spring 2017 when the Office of the Provost established a Handbook Revision Working Group that included six members of the faculty from different schools and colleges. The group, after working for more than a year and after several revisions, developed an original draft of the Proposed Revision of the Handbook, which was submitted to the Provost. On January 31, 2019, Provost Wutoh submitted a Draft Revision of the Handbook to the Faculty Senate via its Chairperson.

The Chairperson, after a Senate-initiated review period that yielded additional suggestions, sent a draft revision to the Faculty Handbook Committee, as required by Section 2.9.2.1, so it could review the proposal and provide its recommendations.

On March 7, 2019, the Faculty Senate, after completing its formal procedures for reviewing and voting on the matter, approved the “January 31, 2019 (with March 7, 2019 Faculty Changes) Proposed Draft Faculty Handbook.” Although there were concerns indicated by the Provost (to which the Council of the Faculty Senate responded), the Faculty Senate-approved version to revise the *1993 Handbook* was forwarded to the Board of Trustees by the President.

The Board of Trustees, however, blatantly disregarded the established process. The Academic Excellence Committee and the Legal and Audit Committee of the Board of Trustees made numerous (17) and significant changes to the content and substance of the Council of the Faculty Senate-approved version.

Clearly, the Board had the option to accept or reject any proposed revisions. However, rather than doing so, the Board took the step of creating its own new proposals. In accordance with Section 2.9.2.1, such proposed revisions were required to be reviewed by the faculty, specifically the Faculty Handbook Committee of the Faculty Senate, before the new language could become final. This process did not occur.

In fact, the Board did what Section 2.9.2.1 specifically forbids it from doing - namely, it finalized its own revisions to the Handbook without any faculty review or input, whatsoever, of its proposals. If the Board could make changes to the *Handbook* independently, Section 2.9, which laid out the procedure for revisions of the *1993 Handbook*, would have been superfluous.

Section 2.9.1., “Proposed Amendments,” further specifies the process that the Board is required to follow:

Proposals for revising those portions of the Faculty Handbook covered by this procedure can be made by the Board of Trustees....

(a) Proposals made in the form of texts intended to replace in whole or in part some current expressions of the handbook...

(c) A brief explanation of the reason(s) for proposing the revision will accompany the proposal...

In unilaterally revising sections of the Handbook without any “explanation of the reason(s)”, the Board clearly violated the procedures established in Section 2.9 and flagrantly abused its power. (We recognize that Section 2.9 of the *1993 Handbook* indicated that certain sections were not covered by the process dictated by Section 2.9 and, therefore, “revisions could be made by the Board...as appropriate” without following the established procedure. However, that language does not control the revisions at issue.)

The Faculty Senate was informed of the changes unilaterally made by the Board and immediately communicated its objections in a formal letter to Board Chairman Mobley on June 7, 2019. The Senate requested a meeting with the Board to discuss our serious concerns prior to the Board’s anticipated vote to ratify the new Handbook. The Board ignored the Senate’s request and approved the Faculty Handbook on June 7, 2019. On July 21, 2019, the Senate Council again requested a meeting with Board representatives to discuss the concerns regarding the

implementation of a new handbook. The Board again refused the Faculty Senate's request for a meeting.

Some of the more significant unilateral revisions that were made by the Board and that were not reviewed by the Faculty Senate are discussed below.

Substantive Issues and Concerns

There are significant substantive changes that the Board made to the *Handbook* without Faculty Senate input that severely diminished the protections that had been afforded to faculty by the 1993 *Handbook*.

Where Tenure Resides

Section 2.7.4.2 of the 1993 *Handbook* indicated that "A faculty member who has received tenure has a continuous appointment made by the Board of Trustees...". There was no statement regarding the residence of the tenure appointment. During the revision process, the Faculty Senate and the Office of the Provost reached consensus and forwarded to the Board the following language "... for tenured faculty members, tenure resides in the University." The Board, however, unilaterally, and without faculty review, revised the rights of faculty. See Section C1.5 of the 2019 *Handbook*, "A faculty member's appointment is generally made to a specific academic department...".

Appeal Rights of Faculty Denied Tenure

Section 2.7.4.6.2 of the 1993 *Handbook* had provided that "If the dean's or school/college APT Committee's final decision is negative, the candidate...may appeal that decision to the Faculty Grievance Commission (FGC) before the recommendation is reviewed by the appropriate vice president." Both the Faculty Senate and the Office of the Provost recommended that the Board adopt a provision that "final action by the Provost will be held in abeyance until the FGC appeal process is concluded." The Board, however, unilaterally and without the required faculty review, revised the faculty member's right to appeal which was guaranteed in the 1993 *Handbook*. See D2.5.3, "Final action by the Provost will be held in abeyance until the FGC appeals process is concluded, or up to one year from the date of the dean or school/college recommendation, whichever is shorter."

On other matters, the Board created policies in the 2019 *Handbook* (which would constitute new proposals and thereby require faculty review and consideration) on matters that had not even been raised by the administration or by the faculty. For example, faculty members who have been issued reprimands can now appeal the reprimand only to the next highest administrator. See Section E2 on written reprimands: "If the administrator (issuing the reprimand) decides to let the reprimand stand, the faculty member may request review by the next higher administrative authority...The decision of the administrator who hears the appeal is final...". As a result, for instance, a reprimand issued by a department chairperson can only be appealed to the Dean, and no further. In such a scenario, a faculty member's right to appeal an adverse, unjustified, and/or unfair reprimand is severely curtailed. Since it was a proposal initiated by the Board, the process outlined in Section 2.9 - review by the Faculty Senate - should have been followed before this new policy was adopted. However, this did not occur.

On other occasions, the Board, unilaterally and without faculty review, abolished provisions in the *1993 Faculty Handbook*.

Termination of Faculty Due to Financial Exigency

Section 2.7.8.4.6 of the *1993 Handbook* stated that “A faculty member whose appointment is terminated for reasons of financial exigency has the right to appeal...in cases where other faculty members in the same department are retained...”. Although the Faculty Senate had recommended a right of appeal in these circumstances, the Board did not merely reject this provision, it also acted unilaterally to remove all language providing any right to appeal in such circumstances. See Section C5: Separation of Faculty Due to Financial Exigency.

Section 2.7.8.4.5 of the *1993 Handbook*, “Rights of Tenured Faculty Members,” stated that “the appropriate Faculty Senate Committee will monitor the efforts made by the University in finding suitable positions for displaced faculty members within the University.” The Faculty Senate and the Office of the Provost reached consensus on language which would maintain the rights of faculty in this situation.

This language was presented to the Board which, again, rather than rejecting the proposals with an “explanation of reason(s),” as required, completely removed the *1993 Handbook* language providing a monitoring role for the Faculty Senate. The Board also disregarded language recommended by the Faculty Senate and by the Provost on several issues involving faculty rights: provisions that defined academic freedom, provisions that provided faculty the right to appeal to the Provost adverse evaluations by chairpersons and deans on their performance; provisions calling for faculty to represent no less than half of the membership of University committees; and the right of temporary faculty members to appeal a written reprimand or a major sanction to the Provost.

There is yet another serious concern: the Board deleted language pertaining to a grandfather clause for faculty hired under the *1993 Handbook*. Their position is clear: the *1993 Handbook* has been replaced and the revised *2019 Handbook* applies to all faculty. As a result, faculty who expected the *1993 Handbook* to govern their terms of employment, now find themselves being governed by the *2019 Handbook* which affords them significantly fewer rights and protections. This amounts to a unilateral abrogation by the Board of a prior agreement between the faculty and the University, that is, the *1993 Handbook*.

In conclusion, the Board of Trustees has acted unilaterally to make revisions and add new policies to the *2019 Handbook* that are both in clear violation of the process established by the *1993 Handbook*. Moreover, these changes are deeply inimical to the well-being and the best interests of Howard University faculty.

The Faculty Senate remains deeply concerned by these developments. On October 16, 2019, we again requested a meeting with the Board to discuss these matters. We received no response to our request.

Accordingly, we submit this formal complaint.

Respectfully,
The Steering Committee
Howard University Faculty Senate