

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

_____)	
RAKESH KUMAR,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 1:15-cv-00120-JDB
)	
GEORGE WASHINGTON UNIVERSITY,)	
)	
Defendant.)	
_____)	

**REPLY BRIEF IN SUPPORT OF
DEFENDANT GEORGE WASHINGTON UNIVERSITY'S MOTION TO DISMISS**

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Defendant George Washington University (“GW” or “the University”) submits this Reply Brief in Support of its Motion to Dismiss the Complaint, and now Plaintiff Rakesh Kumar’s (“Plaintiff” or “Kumar”) First Amended Complaint.¹

INTRODUCTION

Despite adding several allegations, Kumar’s First Amended Complaint (“FAC”) fails to cure the factual pleading deficiencies of his original Complaint. The Court should decline Kumar’s invitations to disregard the plain language of the governing documents and to second-guess GW’s investigation of Kumar’s research misconduct, particularly where the law and the facts alleged do not support Kumar’s contentions. Thus, for the reasons set forth below and for those set forth in GW’s Memorandum in Support of its Motion to Dismiss (“Opening Memorandum”), the Court should dismiss Kumar’s First Amended Complaint.²

ARGUMENT

I. **Kumar Is Not Entitled To Unreasonable Or Unwarranted Inferences**

In evaluating a motion to dismiss under Rule 12(b)(6), while the Court must grant Kumar “the benefit of all inferences that can be derived from the facts alleged,” the Court need not accept inferences that are “unsupported by facts alleged in the complaint, nor must the Court accept plaintiff’s legal conclusions.” *Hodges v. Dist. of Columbia*, 975 F. Supp. 2d 33, 42 (D.D.C. 2013) (citations omitted). Likewise, a complaint cannot survive a motion to dismiss where it offers only “naked assertions” devoid of “further factual enhancement.” *Paulin v. George Washington Univ. Sch. of Med. & Health Sciences*, 878 F. Supp. 2d 241, 245 (D.D.C.

¹ GW notes in this Court’s Minute Order of May 19, 2015 granting GW’s motion for extension of time, the Court instructed GW to file its Reply in Support of its original motion to dismiss and its Answer to the Amended Complaint by June 12, 2015. Since GW’s original Motion to Dismiss was pending when Kumar filed his FAC, the time for it to Answer Kumar’s FAC continues to be tolled until the Court rules on the pending motion. *See* Fed. R. Civ. P. 12(a)(4)(A). GW has filed a separate motion on this issue.

² The arguments in GW’s Opening Memorandum apply equally to Kumar’s FAC, and therefore, GW requests that the Court consider those arguments as being carried forward.

2012) (internal quotations and citations omitted).³ As shown below, Kumar invites the Court to make several unreasonable and unsupported inferences the Court should reject.

II. Kumar Fails To Sufficiently Allege That GW Has Breached Any Contract

Despite his additions in the FAC, Kumar fails to sufficiently allege any claim for breach of contract. Kumar argues that GW only sought the dismissal of two particular breaches, Opp. at 5, but he misunderstands GW's arguments, which focused on examples of why Count I of the Complaint (and now, the FAC) must fail. In reality, GW asserted clearly that "Plaintiff has failed to plead facts sufficient to support his claim that the University breached its contract with him, and therefore, that claim should be dismissed." Opening Mem. at 5. GW then identified specific examples of this failure, but not to the exclusion of any other breaches alleged. Furthermore, GW's arguments that Kumar fails to allege any breaches of the covenant of good faith and fair dealing in its Opening Memorandum apply equally to the same alleged breaches with respect to Kumar's breach of contract claim. Nevertheless, GW reiterates that Kumar fails in any respect to allege a breach of contract claim on which relief can be granted.⁴

³ Kumar incorrectly asserts that the Court should disregard the documents cited in GW's motion to dismiss, or alternatively, treat GW's motion as one for summary judgment, on the grounds that review of "a Motion to Dismiss must be based only on the Complaint." Opp. at 3 n.3. *Paulin*, which Kumar cites, refutes that position, holding that on a motion to dismiss courts may consider "the facts alleged in the complaint, **any documents either attached to or incorporated in the complaint** and matters of which [the court] may take judicial notice." 878 F. Supp. 2d at 246 (quoting *E.E.O.C. v. St. Francis Xavier Parochial Sch.*, 117 F.3d 621, 624 (D.C. Cir. 1997)). Thus, the Court may consider the underlying documents incorporated into the FAC without converting GW's motion to one for summary judgment.

⁴ Kumar concedes that he "does not allege that the failure to increase his salary was itself a breach of contract." Opp. at 9. Rather, he contends that the "failure to increase his salary was a component of damage resulting" from the breaches alleged in Paragraph 129 of the FAC. *Id.* As a result, there is no breach claim to dismiss on this issue, and it will be resolved to the extent the Court dismisses Counts I and II of Kumar's FAC.

A. *Kumar Cannot Sustain A Breach Claim Based On His Removal As Chairman Because It Was An At-Will Position*

The Court should reject Kumar's requested "inference" that "the language of [his] employment letter meant he could only be removed from his chairmanship for cause," Pl. Opp. to Mot. to Dismiss, at 8 (May 11, 2015) ("Opp." or "Opposition"), because it is unreasonable and unsupported, *see Hodges*, 975 F. Supp. 2d at 42. This is particularly so given the letter's unambiguous language that Kumar would serve as Chairman "at the pleasure of the Dean [or University]." *See* Ex. A to Opening Mem., at 2, 5 ("MTD Ex. A"); Ex. B to Opening Mem. ("MTD Ex. B"). Kumar offers no valid basis for the Court to ignore this language.

Instead, Kumar selectively quotes language from his initial recommendation letter, not his actual appointment letter. *See* MTD Ex. A, at 3-6. The actual appointment letter does not mention his performance in the context of the Chairmanship, but instead only states that Kumar would hold the position "at the pleasure of the Dean." *Id.* at 2. When read in context, however, even the recommendation letter undermines Kumar's position, as it states:

The Department Chair position is an administrative one, and as with all senior administrative positions, you will serve in this capacity *solely at the pleasure of the Dean*. While it is our *expectation* that you will continue to serve in this capacity, contingent upon your satisfactory performance in that role, should you cease to serve in the role of Chair *at any time*, the administrative component of your total approved salary will be discontinued.

Id. at 5 (emphasis added). The letter is clear that the "sole[]" consideration in Kumar retaining the Chairmanship was "the pleasure of the Dean." *See id.* Moreover, Kumar's continued service as Chairman was only an "expectation," and the letter acknowledges that Kumar could cease to serve in that role "at any time." *Id.* Thus, the Chairmanship was an at-will position, and Kumar's removal was not a breach of any contract.

Kumar disputes this inexorable conclusion by attempting to distinguish *Hall v. Ford*, 856 F.2d 255 (D.C. Cir. 1988), cited in GW’s Opening Memorandum, on the grounds that the subject institution in that matter was a “public university” and that the plaintiff was an “excepted service employee” subject to a statute that explicitly waived any job protection. Opp. at 6-7. Kumar fails to explain, however, why those two factors – which were separate factors the D.C. Circuit considered – nullify the court’s holding that the language “at the pleasure of” “presumptively [made] Hall an at-will employee.” *Hall*, 856 F.2d at 265-66 (citing *Lyons v. Barrett*, 851 F.2d 406, 410 (D.C. Cir. 1988)). *Lyons* confirms this conclusion by making the same general point – that an employee serving “at the pleasure of another” had no property interest in continued employment – and it does so without reference to whether the employee was an “excepted service employee.” See *Lyons*, 851 F.2d at 410. Kumar fails to cite a single case contravening these holdings. His attempt to muddy the waters by implying that his tenure gives him added protection fails no better, see Opp., at 6, as every appointment letter he received stated the Chairmanship was a separate, ***administrative position***, see MTD Ex. A, at 2, 5; MTD Ex. B, and therefore was not subject to or protected by tenure.⁵

Accordingly, GW did not breach a contract by removing Kumar from the chairmanship.

B. Kumar Fails To Allege That GW Disclosed Any Confidential Information

Kumar’s FAC continues to rely on conclusory statements, which are insufficient for pleading in Federal Court. Kumar new allegations are based “on information and belief.”

FAC ¶ 29. These allegations do not support even an inference that GW disclosed confidential information. Kumar admits that a third party complained to ORI before GW had any

⁵ Because the plain language of the appointment letters demonstrate that Kumar’s Chairmanship was at-will, his injection of purportedly belated performance evaluations in that role is irrelevant. See Opp. at 7- 8. The fact that the FAC does not claim this supposed failure constituted a breach under either Counts I or II only confirms this conclusion.

information regarding Kumar's research misconduct. *Compare* FAC ¶ 29 with *id.* ¶ 16.

Kumar's allegations regarding the postings on "RetractionWatch.com" support this inference, as he concedes that the "anonymous blogger" stated that "ORI knows it all." *Id.* ¶¶ 27-28. Because Kumar's claim of disclosure of confidential information is merely speculative, not plausible, and therefore the claim should be dismissed. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009) ("Where a complaint pleads facts that are merely consistent with a defendant's liability, it stops short of the line between possibility and plausibility of entitlement to relief.") (internal quotations and citation omitted).

Even if Kumar could plead a breach of confidentiality regarding the misconduct investigation, he has not plead a contractual basis – whether implied or in fact – for relief. Foremost, neither ORI's regulations nor GW's Misconduct Policy provides an unfettered right of confidentiality. *See* 42 C.F.R. § 93.108(a); GW Policy & Procs. Regarding Allegations of Misconduct, § III(C) ("Misconduct Policy") (Ex. C to Opening Mem.). ORI's regulations note that confidentiality is limited "to the extent possible," 42 C.F.R. § 93.108(a), while GW's Misconduct Policy similarly requires confidentiality only "to the extent possible without compromising public health and safety or the thoroughness of the inquiry or investigation," Misconduct Policy, § III(C). These caveats defeat Kumar's breach claim based on a purported disclosure of confidential information to Kumar's co-authors and the managing editor of a publication that published one of Kumar's articles, particularly given that the investigation had already ended and found research misconduct when GW made the disclosure in November 2014, and GW made the disclosure in proposing a retraction. *See* FAC ¶ 56.

Accordingly, the Court should dismiss Kumar's breach of contract claim to the extent it is based on alleged disclosures of confidential information.⁶

C. *Kumar Had No Contractual Rights To The Grants And GW Acted Consistent With Its Misconduct Policy*

Kumar still has not identified any contractual right to NIH-funded research grants or that GW breached any contractual obligation with respect to its handling of those grants or other administrative actions GW took before the release of the Final Investigation Report. Indeed, he concedes that the NIH grants at issue belonged (or would have belonged) solely to GW as the grantee institution, that Kumar has no third-party beneficiary interest in the grants, and that he has no contractual or property interest in those grants. *See Opp.* at 30 Absent a contractual right to the grant, Kumar now claims that he is "asserting his rights under GW's research misconduct policies." *Id.* GW's policies do not support his claim. Section X of GW's Misconduct Policy, titled "University Administrative Actions," states that "[t]he university will take appropriate administrative actions against individuals when an allegation of research misconduct has been substantiated as determined by the Provost after consultation with the RIO." Misconduct Policy, § X. The identified "administrative actions" include "removal of the responsible person from the particular project(s), letter of reprimand, special monitoring of future work, probation, suspension, salary reduction," and more drastic remedies. *See id.*⁷ Section XI(E) provides that "University officials will take interim *administrative actions*, as appropriate, to protect Federal funds, protect ongoing research activities, and support the purposes of the Federal financial assistance." *Id.* § XI(E) (emphasis added). This subsection grants GW the right to take administrative actions – like those listed in Section X – on an interim basis, so long as the action

⁶ For all the same reasons, Kumar's claim that GW breached the covenant of good faith and fair dealing when it disclosed confidential information also fails.

⁷ Nothing in Section X limits the administrative actions available to GW to those listed in the provision.

is “appropriate” and designed to protect one of the interests listed in Section XI(E). Taken together, these provisions govern when GW may take administrative actions, both before and after research misconduct has been substantiated.

Kumar twists these provisions, asserting that the administrative actions listed in Section X can only be taken after research misconduct has been substantiated, not as interim actions, and that GW therefore breached the contract and the covenant of good faith and fair dealing. Opp. at 28-29. This argument is meritless. Section XI(E) does not define administrative actions, but rather, identifies the bases for taking such actions on an interim basis. The provision refers generally to “administrative actions,” which are identified in Section X, titled (not coincidentally) “University Administrative Actions.” This parallel language, found in consecutive sections of the policy, surely was not lost on the drafters. Consequently, the plain language of the Misconduct Policy permits GW to take the administrative actions listed in Section X (and others), both on a final and interim basis, subject only to the limitations in those respective provisions (*i.e.*, for Section X, after research misconduct is substantiated, and for Section XI(E), to protect the interests listed therein). *See* Misconduct Policy, §§ X, XI(E).

Here, all of GW’s actions were permissible under the Misconduct Policy. With respect to grants, Kumar alleges that GW placed his grant requests on hold in July 2014, before the issuance of the Final Investigation Report. *See* FAC ¶¶ 82-83. Doing so clearly protects federal (NIH) funds and financial assistance. Moreover, the allegation that the Provost told Kumar that GW would not take final action on those grants until after the two met to discuss the Final Investigation Report confirms that GW’s investigation of Kumar motivated its handling of the grants. *Id.* ¶¶ 83-85. Kumar also alleges that GW returned the NIH grant after the issuance of the Final Investigation Report substantiating Kumar’s research misconduct. *Id.* ¶ 115. Thus,

GW's return of the grant was consistent with the Misconduct Policy, as research misconduct already had been "substantiated."⁸

Kumar also contends that several other actions GW took were improper interim actions, including "preparing for the possible eventuality of Dr. Kumar's removal as Chair, suspending Dr. Kumar's access to his Department and laboratory, delaying approval of Dr. Kumar's proposed visiting professorships and travel to conferences." Opp. at 29. Again, there is no contract provision preventing GW from preparing to replace Kumar, nor does that preparation infringe any of Kumar's rights (particularly because the Chairmanship was an at-will position), so that cannot sustain a breach claim. GW could have done this at any time, regardless of whether an investigation was ongoing. Also, suspending Kumar's access to his department and lab, thereby limiting his research and protecting federal funds for which his research was used, clearly satisfies Section XI(E) of the Misconduct Policy. Third, Kumar has not alleged any factual basis showing that a delay in approving visiting professorship requests was related to the investigation, and so cannot sustain a breach. See FAC ¶ 86. Likewise, Kumar alleges that GW approved his travel and accommodations for the Kyoto conference before the publication of the Final Investigation Report, and canceled them only after the release of that report (i.e., when research misconduct had been substantiated). *Id.* ¶¶ 87-88. Thus, the Misconduct Policy either permits or does not apply to these actions.

D. GW's Removal Of Kumar As Ms. Mudvari's Thesis Advisor Was Not A Breach

Kumar fails to identify any contractual provision breached when GW removed Kumar as thesis advisor to Ms. Prakriti Mudvari. The one provision of the GW Faculty Code he cites is

⁸ Kumar does not allege any facts showing that GW's relinquishment of the grants was irrational or motivated by ill will. Rather, his allegations confirm that GW delayed action until it could see the results of the Final Investigation Report, and then took final action after research misconduct was substantiated. See FAC ¶¶ 82-85, 115. For these reasons, the Court should also dismiss Kumar's breach of the covenant of good faith and fair dealing claim as to GW's handling of the grants.

entirely irrelevant. That provision actually covers “Academic Freedom,” and states, “[a] faculty member shall enjoy freedom of investigation subject only to legal restrictions and such guidelines as shall be recommended by the Faculty Senate and adopted by the University.” Faculty Code, § II.A (attached as Ex. A). The provision does not address Kumar’s right to advise Ph.D. candidates, nor does it suggest that it even relates to such supervision. *See id.* Rather, the section allows faculty to pursue the academic subjects they desire, regardless of whether those subjects are controversial and subject only to limited exceptions. Subsection B cements this conclusion, as it grants faculty “freedom of expression” while requiring that expression of personal views not be attributed to GW. *Id.* § II.B. Likewise, provisions relating to “teaching duties” are covered elsewhere in the Faculty Code, including in the section titled “Professional Responsibilities.” *See, e.g., id.* § III.C.

Because GW had no contractual obligation to allow Kumar to remain as Ms. Mudvari’s thesis advisor, the Court should dismiss this alleged breach.⁹

III. GW Did Not Act In Bad Faith

Kumar does not dispute that the Complaint – and now the FAC – allege that Plaintiff was provided with all of the procedural steps mandated by GW’s Misconduct Policy. Nor does Kumar dispute that “courts should not invade, and only rarely assume academic oversight, except with the greatest caution and restraint, in such sensitive areas as faculty appointment, promotion and tenure, especially in institutions of higher learning.” *Allworth v. Howard Univ.*, 890 A.2d 194, 202 (D.C. 2006) (internal quotations and citation omitted). Nor does Kumar dispute that “in determining whether a university has complied with its own rules or contract, a

⁹ Based on the FAC and Kumar’s Opposition, it appears Kumar’s claim that GW breached a contract by preventing him from continuing his research really covers GW’s conduct with respect to handling of grants. *See Opp.* 25-31. The Court should therefore dismiss this alleged breach, referenced in passing in Paragraph 129(e) for Count I, and in Paragraph 133(h) for Count II, because they are duplicative and entirely unsupported by factual allegations.

court must be careful not to substitute its judgment improperly for the academic judgment of the school.” *Id.* at 202.¹⁰

Instead, Kumar asks the Court to ignore these rules of law and to substitute its judgment – and his judgment – for GW’s on the grounds that Kumar has “sufficiently alleged facts which, if taken as true, would demonstrate that GW’s decisions . . . were irrational, or motivated by bad faith or ill will unrelated to his performance as a professor and a department chair.” *Opp.* at 12. Because Kumar alleges no such thing, Count II should be dismissed.

A. *Kumar Fails To Allege Any Bias Or Conflict In His Misconduct Proceedings*

Kumar asserts that GW acted in bad faith because it refused to remove Dr. Keith Crandall from the investigation committee. *Opp.* at 13-18. Despite amending his allegations, Kumar still does not dispute that GW afforded him all of the procedures required by the Misconduct Policy. Instead, he asserts that GW acted in bad faith, although his allegations show nothing of the sort. Rather, his allegations show that GW abided by its own policies, and ORI’s regulations, in empanelling the investigation committee.

ORI’s regulations state that an institution investigating research misconduct must “[t]ake reasonable steps to ensure an impartial and unbiased investigation to the maximum extent practicable.” 42 C.F.R. § 93.310(f). ORI does not specify the steps the institution must take, but rather, delegates it to the institution’s discretion. Consistent with that, Section VI(C) of GW’s Misconduct Policy provides that the investigation committee “will consist of at least three individuals who do not have real or apparent conflicts of interest in the case, are unbiased, and have the necessary expertise to evaluate the evidence and issues related to the allegations,” while

¹⁰ Kumar argues that the Court should ignore *Allworth* because the case was decided at summary judgment rather than on a motion to dismiss. *Opp.* at 12 n.8. That argument, however, fails to explain why the legal propositions set forth in *Allworth* do not apply, irrespective of the case’s procedural posture.

leaving final discretion to assess bias and conflicts to the University's Provost (in consultation with several University personnel).

Here, Kumar alleges that he (belatedly) objected to Dr. Crandall pursuant to the policy, but acknowledges that GW's Provost determined that Dr. Crandall did not have any bias or conflict of interest that required his removal from the committee. *See* FAC ¶¶ 40-43. This alone merits dismissal of Kumar's claim. Moreover, his allegations do not reflect that GW acted irrationally or in bad faith. GW honored Kumar's first extension request, despite having no obligation to do so. GW also exercised its discretion, consistent with Kumar's belief, to remove Dr. Prentice from the investigation committee. That GW later refused a second extension request by Kumar – when Kumar should have had to vet only Dr. Prentice's replacement – and disagreed with Kumar's view of Dr. Crandall, does not show bad faith or ill will. Rather, it is simply another attempt by Kumar to substitute his judgment for that of the University.

The added color in the FAC does not save Kumar's claim. He now details the basis for his belief that Dr. Crandall was conflicted, but in doing so, Kumar admits that he knew of those conflicts when GW initially proposed Dr. Crandall for the committee. *See* FAC ¶ 41 (alleging that Kumar knew of the grounds for his claim that Dr. Crandall had a purported conflict in April and September 2013). That Kumar did not raise these issues when GW first proposed Dr. Crandall belies any claim that he actually believed these facts constituted conflicts of interest.

Finally, Kumar's reliance on *Furey v. Temple University*, 730 F. Supp. 2d 380 (E.D. Pa. 2010), is misplaced. In *Furey*, the court did not disregard the language in Temple's Code of Conduct, as Kumar asks the Court to do here. Rather, it noted that "significant and unfair departures from an institution's own *procedures* can amount to a violation of due process." *Id.* at 396-97 (citation omitted). The court noted that because Temple's Review Board found a

procedural defect “but did not recommend a new hearing,” material facts remained as to whether the student’s due process rights were violated. *Id.* at 397. In contrast, here, Kumar’s allegations show that GW complied with its own procedures, while Kumar did not.

B. Kumar Fails To Sufficiently Allege Any Irregularities In GW’s Investigation

Kumar’s claim that GW breached the covenant of good faith and fair dealing in its conduct of the investigation based on purported “other irregularities” must fail because the claim is based entirely on conclusory allegations devoid any factual support.

This is now Kumar’s second attempt to allege his claims, and despite having complete access to the Final Investigation Report and his own response, Kumar does not allege any *fact* demonstrating any irregularity. For example, he alleges that “the committee engaged in improper and unfair leading questioning that was designed to elicit the response that the questioner desire instead of a search for truth,” FAC ¶ 48, but fails to identify a single witness, question, or answer that supports this allegation. Likewise, Kumar alleges that “members of the investigation Committee repeatedly misrepresented testimony of witnesses to other witnesses during their interviews and coached witnesses to provide testimony that would immunize them while implicating Dr. Kumar,” but again, does not identify a single, non-conclusory fact in support. *See id.* ¶ 49. Nor does Kumar identify what questions or subjects the committee failed to explore with him that prevented him from addressing certain information. *See id.* ¶ 50. The FAC cannot survive where it offers only “naked assertions” devoid of “further factual enhancement.” *Paulin*, 878 F. Supp. 2d at 245 (internal quotations and citations omitted).

Kumar disputes this and insists that his allegations “contain sufficient facts.” *Opp.* at 20. The only two “facts” Kumar does allege do not demonstrate any irrationality or bad faith on the part of GW. First, Kumar alleges that the committee’s interviews focused on issues other than Kumar’s misconduct, including his chairmanship, what discussions the witnesses had with the

dean's office, and whether the witnesses knew Kumar's wife's name. FAC ¶ 47. The investigation committee had the discretion to determine what was "relevant," not Kumar, as the committee was fulfilling its obligations under ORI regulations. 42 C.F.R. § 93.310(g)-(h).

Second, Kumar alleges that GW's former Research Integrity Officer gave instruction to three junior scientists – who Kumar admits were also respondents in the GW inquiry – not to assist Kumar because doing so might endanger their own inquiry defenses. FAC ¶¶ 31-32. Again, these allegations do not demonstrate intent to harm Kumar, but rather an effort to explain the process to other respondents (who also were entitled to a fair process).¹¹

C. *Kumar Fails To Allege That The Investigation Results Were Not Supported By A Preponderance Of The Evidence*

Kumar's claim that the investigation committee's conclusions that he engaged in research misconduct are not supported by a preponderance of the evidence is conclusory, and the allegations on which he relies to support his claim are also conclusory. Kumar's allegations, "because they are no more than conclusions, are not entitled to the assumption of truth," and therefore, the Court should reject those claims. *See Iqbal*, 556 U.S. at 679.

For example, Kumar asserts that his "preponderance" claim is supported by allegations that the committee relied on misrepresentations of witness testimony or statements by witnesses that were contradicted. Opp. at 21-22 (citing FAC ¶ 52). But as described above, Kumar fails to allege a single example of such misrepresentation or contradiction. Kumar fails to even identify a witness or a date. Likewise, Kumar contends that his "preponderance" claim is supported by allegations claiming that GW failed to "adequately" consider Kumar's response to the Draft

¹¹ Again, *Furey* does not aid Kumar here. There, the court detailed "several incidents," beyond mere atmospherics, in which the hearing may have violated the student's due process rights, including direct statements made by the adjudicators to the plaintiff and his mother (instructing his mother to "shut up") and a discussion of the officer's written statement that he appeared to concoct after a phone call during a recess. *Furey*, 730 F. Supp. 2d at 396-397. In contrast, Kumar fails to offer a single fact or example in support of his bare assertions that the investigation was tainted with "irregularities."

Investigation Report. Opp. at 22-23 (citing FAC ¶¶ 54, 58).¹² But again, Kumar fails to provide any specific fact – an argument, erroneous testimony, or some example of contradiction – that was included in his response but not accounted for by GW. *See id.* Kumar then combines these two assertions and claims that his “preponderance” claim is supported by allegations that GW failed to consider his “evidence-based” arguments, and argument that fails for the same reasons. Opp. at 23-24. Nor does *Furey*, 730 F. Supp. 2d at 398, aid Kumar, as that case was filled with actual examples of evidence that the student’s investigation panel did not consider, or should have rejected but did not. Kumar alleges nothing of the sort.

Finally, Kumar asserts that GW failed to account for his “detailed, record supported, rebuttals to the statements in the Draft Report.” Opp. at 24 (citing FAC ¶¶ 54, 58). But this argument simply reflects a disagreement in the interpretation of the evidence, not any irrationality or ill will. And while Kumar does not dispute *Allworth*’s admonition that “in determining whether a university has complied with its own rules or contract, a court must be careful not to substitute its judgment improperly for the academic judgment of the school,” 890 A.2d at 202,¹³ he nevertheless asks the Court to do exactly that here. Opp. at 24 (“if the evidence in favor of GW’s misconduct findings is compared with the evidence set forth in Dr. Kumar’s Response to the Draft Investigation Report, Dr. Kumar’s evidence is more convincing and therefore GW failed to prove misconduct by a preponderance of the evidence”). There is no basis for the Court to do so, however, particularly given that GW conducted a complex

¹² Kumar’s allegation – that GW failed to “adequately” or “meaningfully” consider his response to the Draft Investigation Report – is an admission that GW did consider the response. Kumar’s quarrel is merely one of degree. Thus, Kumar admits that GW complied with the terms of its Misconduct Policy, and as a result, Kumar’s breach of contract claim that GW purportedly failed to “adequately” or “meaningfully” consider his response must be dismissed.

¹³ The need for deference in connection with academic oversight is underscored by GW’s Misconduct Policy’s requirement that investigation committee members have sufficient expertise to evaluate a particular case. Misconduct Policy, § VI(C).

investigation that, as Kumar admits, required sufficient academic expertise to evaluate. *See* Opp. at 13-14 (noting Kumar objected to Dr. Prentice due to lack of academic expertise, and stating that GW was required to remove him on those grounds); FAC ¶ 38. Consequently, the Court should dismiss Kumar’s unsupported “preponderance” claim.

IV. GW Did Not Tortiously Interfere By Relinquishing Grants

Kumar’s tortious interference claim fails for two independent reasons. First, the FAC does not sufficiently allege that GW intended to interfere with any business expectancy that Kumar may have had, and the allegations Kumar does provide do not support any reasonable inference to that effect. Second, Kumar cannot sustain a claim for tortious interference because only GW – not Kumar or “Prestigious Local Institution” – had any rights and/or obligations in connection with the grants that were refused or relinquished. Thus, GW has a legitimate justification for its conduct that Kumar cannot defeat.

As Kumar concedes, one element of tortious interference is “intentional interference inducing a breach or termination of the relationship or expectancy.” *Casco Marina Dev., L.L.C. v. Dist. of Columbia Redev. Land Agency*, 834 A.2d 777, 83-84 (D.C. App. 2003). Kumar’s only allegations directly related to intent are conclusory. *See* FAC ¶¶ 141-42 (alleging that “GW active with evil motive, actual malice, or with intent to injure, or in willful disregard or the rights of Dr. Kumar”).¹⁴ But Kumar is not empowered “to plead the bare elements of his cause of action, affix the label ‘general allegation,’ and expect his complaint to survive a motion to dismiss.” *Iqbal*, 556 U.S. at 687.

Beyond conclusory allegations of intent, Kumar’s other allegations do not support any inference that GW intended to interfere with Kumar’s job search. For example, GW placed

¹⁴ While intent can be inferred if the tort involves “fraud, misrepresentation, or disparagement,” *Intelsat USA Sales Corp. v. Juch-Tech, Inc.*, 934 F. Supp. 2d 101, 116 (D.D.C. 2013), the FAC contains no such allegations in connection with Kumar’s tortious interference claim.

Kumar's grant applications on hold in July 2014, before Kumar began speaking with Prestigious Local Institution about employment in August 2014. *See* FAC ¶¶ 82-83, 110. Similarly, Kumar alleges that the Provost told Kumar that GW would not take any action with respect to those grants until after the two met to discuss the Final Investigation Report, and in fact, GW took no final action until after that meeting. *Id.* ¶¶ 83-85, 115. Kumar's allegations thus confirm that (1) GW first delayed the grant applications due to the pending investigation, (2) GW's Provost told Kumar that final action would not be taken until the two had discussed the outcome of the investigation (all before Kumar even began discussions with Prestigious Local Institution), and (3) GW took action with respect to the grants only after the meeting between the Provost and Kumar. The only reasonable inference is that GW's handling of the grants was motivated by, and based on, the investigation, not Kumar's potential employment elsewhere.¹⁵

Kumar also concedes that the grants belonged to (or would have belonged to) GW as the grantee institution, and that he had no legal rights to those grants whatsoever. *See* Opp. at 30; *see also Al-Hendy v. Meharry Med. College*, No. 3:11-cv-1201, 2014 WL 3853839, at *19 (M.D. Tenn. Aug. 6, 2014). He also admits he had no third-party beneficiary interest, contractual rights, and no property interest in the grants, Opp. at 30,¹⁶ and he does not dispute that Prestigious Local Institution had no such rights either. As a result, only GW had rights (and corresponding legal obligations) to the grants, and therefore cannot be held liable for tortious interference based on an exercise of those rights. Penalizing a higher educational institution for

¹⁵ Kumar's rejoinder – that “GW returned the grant to NIH despite Kumar's numerous pleas not to do so and warning of the damage it would cause to him,” FAC ¶ 115 – even if true, is not a sufficient basis to find intent. *Bannum, Inc. v. Citizens for a Safe Ward Five, Inc.*, 383 F. Supp. 2d 32, 45 (D.D.C. 2005) (“a general intent to interfere or knowledge that the conduct will injure the plaintiff's business dealings is insufficient to impose liability” for tortious interference).

¹⁶ The NIH grants need not have even followed Kumar if he had obtained a position elsewhere. *Kalderon v. Finkelstein*, No. 08-cv-9440-RJS-THK, 2010 WL 9488933, at *13 (Mar. 10, 2010 S.D.N.Y.).

exercising its contractual rights vis-à-vis federal research grants – particularly when doing so will protect the institution from potential liability – would have troubling policy ramifications.

That GW was the only party with rights to the grants distinguishes the cases on which Kumar relies. In *Onyeoziri v. Spivok*, 44 A.3d 279 (D.C. 2012), the plaintiff originally had purchased the house that was the subject of the foreclosure by the bank. In *Casco Marina*, 834 A.2d 777, the plaintiff sought to sublease property to which the two other parties had some identifiable interest (as lessor and lessee). Both *Onyeoziri* and *Casco Marina* also dealt with situations in which the alleged tortfeasor had at least arguably improved its economic position at the expense of the plaintiff, but where its economic interests might have been fully protected absent its interference. See *Onyeoziri*, 44 A.3d at 288-290; *Casco Marina*, 834 A.2d at 84. In contrast, neither Kumar nor Prestigious Local Institution had any rights, preexisting or otherwise, to the NIH grants, and GW's relinquishment/refusal of those grants did not leave it in a more advantageous economic position. This is consistent with the fact that GW did not take (or intend to take) a prospective economic advantage for itself, but rather, to protect itself from liability for violations of federal law in light of the University's finding that Kumar committed research misconduct. In short, Kumar's tortious interference claim should be dismissed.

V. Kumar Fails To Allege Any Invasion Of Privacy

Kumar does not dispute that, to the extent his invasion of privacy claims were based at all on the RetractionWatch postings from 2013, those counts would be time-barred. Instead, Kumar asserts that his Invasion of Privacy claims – for false light and public disclosure of private facts – are based on other conduct that occurred in 2014. Opp. at 38. Specifically, Kumar alleges that his Invasion of Privacy claims are based on: (1) his removal as supervisor of Ph.D. student Ms. Prakriti Mudvari, and (2) his public removal by GW from his laboratory in late July 2014.

Kumar has not sufficiently alleged that either incident satisfies the elements for false light or public disclosure of private facts claims.

A. *GW Did Not Disclose Facts About Kumar's Removal As Ms. Mudvari's Advisor*

Kumar's allegations regarding his removal as Ms. Mudvari's thesis advisor do not sustain either invasion of privacy claim he asserts. To sustain a false light claim, Kumar must sufficiently allege "(1) publicity (2) about a false statement, representation or imputation (3) understood to be of and concerning the plaintiff, and (4) which places the plaintiff in a false light that would be offensive to a reasonable person." *Forras v. Rauf*, No. 12-cv-00282-BJR, 2014 U.S. Dist. LEXIS 53960, at *24 (D.D.C. Apr. 18, 2014) (internal quotations and citation omitted). To sustain a claim for public disclosure of private facts, Kumar must allege (1) publicity, (2) absent any waiver or privilege, (3) given to private facts (4) in which the public has no legitimate concern, and (5) which would be highly offensive to a reasonable person of ordinary sensibilities. *Wolf v. Regardie*, 553 A.2d 1213, 1220 (D.C. 1989). Here, Kumar fails to allege any publicity of any false or private facts, or that anything made public would be offensive to a reasonable person.

Kumar alleges that through late July 2014, he supervised and mentored Ms. Mudvari's dissertation until he was "involuntarily replaced." FAC ¶ 92. He alleges that, as late as July 22, 2014, Ms. Mudvari identified Kumar as her advisor on the final draft of her dissertation, and that on July 25, 2014, GW disseminated "circulars" for her public defense that also identified Kumar as her supervisor. *Id.* ¶¶ 93-95. Kumar then alleges that later on July 25, 2014, he was removed as Ms. Mudvari's advisor, and on July 29, 2014, GW replaced him with Dr. Anelia Horvath. *Id.* ¶ 96. Kumar alleges that at Ms. Mudvari's August 1, 2014 dissertation defense, GW presented Dr. Horvath as thesis advisor, and that the final version of her thesis submitted to GW

identified Dr. Horvath as thesis advisor for the entire period. *Id.* ¶ 97.¹⁷ Kumar's removal and replacement, and Ms. Mudvari's dissertation defense, all occurred *after* GW's Provost spoke with Kumar about the results of the Final Investigation Report. *See id.* ¶¶ 55, 84.

First, GW did not publicize any negative information about Kumar. He admits that GW sent out circulars, but they identified him, not Dr. Horvath, as Ms. Mudvari's thesis advisor. *Id.* ¶ 95. He does not allege, however, that GW retracted the circulars or disseminated updates identifying Dr. Horvath as Ms. Mudvari's advisor. Instead, Kumar alleges only that GW presented Dr. Horvath as thesis advisor at the public defense on August 1, 2014. *Id.* ¶ 97. That allegation is not a denial that Kumar once supervised Ms. Mudvari or a refutation of the circulars. Furthermore, Kumar does not allege that GW disclosed at the public defense that Kumar was removed as advisor or the reasons therefor.

Similarly, Kumar does not allege that GW made any false statements, of and concerning him, or that GW disclosed any private facts. Again, GW sent circulars identifying Kumar as Ms. Mudvari's advisor while he held that position, but then presented Dr. Horvath as the advisor after GW had *actually* replaced Kumar in that role. *Id.* ¶¶ 95-96. Thus, GW's presentation of Dr. Horvath as advisor was true, and was not "of and concerning" Kumar. *See Kitt v. Cap. Concerts, Inc.*, 742 A.2d 856, 859-60 (D.C. 1999) (actor portrayal of clarinet player found not to be "of and concerning" the clarinet player). Moreover, Kumar alleges that Ms. Mudvari revised her final dissertation to identify Kumar as her advisor before sending it to prospective employers. FAC ¶ 99. Thus, any "falsity" – of which there was none – was cured.

¹⁷ Kumar's alleged conflict with Dr. Horvath is immaterial to his claims, as he does not allege that GW publicized this conflict. FAC ¶ 98. It is notable, however, that Kumar alleges several conflicts with other individuals at GW while also disputing the investigation committee's findings about his lab's troubling working environment. *Compare* FAC ¶¶ 41, 43, 98 *with id.* ¶¶ 49, 51.

Finally, Kumar has not alleged the disclosure of any information that would be “offensive to a reasonable person.” Kumar was removed from his role as advisor; there is no allegation that the removal was publicized, discussed, or explained. Absent any such allegations, and given that the circulars publicly identified Kumar as Ms. Mudvari’s advisor, it is not reasonable to infer that attendees of the defense even understood that Kumar had been removed from that role. *See Kitt*, 742 A.2d at 860 (denying claim where actor impersonating plaintiff did not engage in obnoxious behavior and where it was unclear that even a sophisticated viewer would know plaintiff was impersonated). Consequently, Kumar fails to sufficiently allege either invasion of privacy claim with respect to his removal as thesis advisor.

B. GW Did Not Improperly Disclose Facts In Closing Kumar’s Lab

Kumar also fails to sufficiently allege claims for false light and public disclosure of private facts regarding his escort from his lab. Kumar does not allege that GW made any publicly false statements or that GW disclosed any private facts. To the extent GW made any disclosure, it was privileged to do so and did not include information about Kumar.

Kumar alleges that at a July 25, 2014 meeting with the Provost and other GW personnel, he was informed that GW was initiating “an immediate closure” of his laboratory, that Kumar was not permitted to meet alone with his laboratory members or the faculty prior to leaving campus, and that Kumar would need to leave campus after the meeting. FAC ¶¶ 103-105. Nonetheless, GW permitted Kumar to hold a meeting with his lab members, and he was accompanied by the acting department chair. *Id.* ¶ 105. Subsequently, during Kumar’s chaperoned meeting, GW security arrived and instructed that the meeting be halted, and Kumar was escorted from the premises. *Id.* There is no allegation that either GW’s security or administration made any false statements at that time. Nor does Kumar allege that any private facts regarding the reasons GW took certain actions were given to Kumar’s lab members.

Instead, Kumar alleges that “the laboratory would be closing at 5:00 p.m.” on that day, and that the lab members were to immediately cease all research-related activities. *Id.* ¶ 106.

These allegations do not posit any false statements, misrepresentations, or imputations. In fact, Kumar fails to allege that any GW personnel made any statement at Kumar’s meeting with his laboratory staff about the reasons for the lab closure or Kumar’s escort from campus. *See id.* ¶¶ 103-107. Nor can the Court reasonably infer that GW made any such disclosure, given that Kumar alleges that the faculty authored a letter “asking why . . . Dr. Kumar was barred from entering Ross Hall.” *See id.* ¶ 107. Had GW disclosed such information, the faculty would not have needed to ask why Kumar was barred from campus. Likewise, GW had the right to inform Kumar’s lab members – who were GW employees – that their laboratory would be closing. GW’s statement was true, and only disclosed to those who needed the information.¹⁸ In short, Kumar’s escort from campus cannot sustain either invasion of privacy claim.

CONCLUSION

For these reasons and those set forth in GW’s Opening Memorandum, GW respectfully requests that the Court dismiss Kumar’s First Amended Complaint in its entirety.

¹⁸ While Kumar claims that being escorted from the lab was “humiliating,” FAC ¶ 105, it is routine for security to escort former employees from the premises. Kumar does not allege that GW security made any outrageous statements or acted inappropriately during in his removal. Without more, there is no legal basis to find that such routine practice would offend a reasonable person for purposes of the invasion of privacy torts Kumar alleges.

Dated: June 12, 2015

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of June 2015, the foregoing **Reply Brief in Support of Defendant George Washington University's Motion to Dismiss** was filed electronically via the Court's CM/ECF System.

/s/ Alex E. Hassid

Alex E. Hassid

Exhibit A
(GW Faculty Code)

The George Washington University

Faculty Code



2004

The Board of Trustees of The George Washington University has authorized the publication of this recodification (first printing, 1937; second printing, 1945; third printing, 1958; fourth printing, 1964; fifth printing, 1976; sixth printing, 1980; seventh printing, 1986; eighth printing, 1996; ninth printing, 2004 of the Faculty Code governing the academic personnel, together with Procedures for the Implementation thereof.

This recodification was adopted by the Board of Trustees at its meeting on February 28, 2003, as recommended in part by the Committee on Professional Ethics and Academic Freedom of the Faculty Senate, the Faculty Senate, and the President of the University. The University is indebted to several committees of the Faculty and of the Board of Trustees and to the administrative officers for their work in compiling and revising these rulings, which constitute the statement of the rights and privileges, and the responsibilities, of the academic personnel of the University.

January 2004

Jean Antoine Houdon (1741-1828)
George Washington
Cast bronze by The Gorham Foundry
6' 8" h.
The George Washington University
Permanent Collection

Amendments (through 2014) to the 2004 Edition of the *Faculty Code*

By Action of the George Washington University Board of Trustees, February 6, 2004, Article IV., Section A.3.1., appearing on Page 5, was amended as follows:

- a) Insert new sub-section “b) 3)” to read, “A one-year extension of the probationary period shall be granted to requesting faculty who become new parents and apply within twelve months of becoming new parents by submitting a request to the relevant academic officers setting forth his or her reason for requesting the extension. “New parents” for purposes of this provision are faculty members who become parents of a newborn or adopted child. The tenure clock extension may be elected regardless of whether the faculty member takes a full or partial leave in connection with becoming a new parent. However, no such request shall be granted if made after September 10 of the academic year in which the tenure decision would have been made by the department or school absent the extension requested. If a faculty member becomes a new parent a second time during the probationary period, a second tenure clock extension may be granted at the discretion of the Vice President for Academic Affairs, after consultation with the appropriate department chair (if applicable) and dean. Other requests for tenure clock extensions for family related purposes may be granted at the discretion of the Vice President for Academic Affairs, after consultation with the appropriate department chair (if applicable) and dean.”
- b) Change existing sub-section “b) 3)” to “b) 4)”

By action of The George Washington University Board of Trustees, effective October 13, 2006, the following changes to the *Faculty Code* were approved:

That the Faculty Code be amended by adding the following new subsection at the end of Article I.B.:

5. Special Service: Special service faculty may be appointed, upon recommendation of the appropriate faculty and officers of the administration, as teaching professor or program administrator or with such other special service faculty designation as may be approved by the Vice President for Academic Affairs, in order to fulfill special teaching or program administration or development needs. Such appointments do not provide tenure, and special service faculty are not expected to generate productive scholarship.

That the Faculty Code be further amended by adding the following new section after Article IV.A.5:

6. Criteria and Procedures for Appointments, Reappointments, and Promotion of Regular, Active-Status Faculty Serving in Non-Tenure-Accruing Appointments

Each school and each department (except in the case of nondepartmentalized schools) shall take the following actions with regard to appointments, reappointments, and promotion of regular, active-status faculty serving in non-tenure-accruing appointments:

- a) In accordance with this Article IV and Part B of the Procedures for the Implementation of the Faculty Code, the faculty of each of the foregoing units shall approve and publish the criteria to be applied in making decisions regarding appointments, reappointments, and promotion of regular, active-status faculty serving in non-tenure-accruing appointments. These criteria shall be based on the purpose(s) of the non-tenure-accruing appointments. Each letter of appointment for a regular, active-status faculty member serving in a non-tenure-accruing appointment shall include appropriate references to the criteria and purpose(s) applicable to such appointment.

b) Decisions regarding appointments, reappointments, and promotion of regular, active-status faculty for non-tenure-accruing positions at a rank lower than the rank of professor may be based on published criteria that assign different weights to the factors of teaching ability, productive scholarship, and service to the University, professional societies and the public than the published criteria that would be applied to faculty members serving in tenure-accruing appointments in the applicable department or nondepartmentalized school; provided, however, that

1) none of the foregoing factors shall be assigned a weight of zero, and each regular, active-status faculty member serving in a non-tenure-accruing position shall be expected to generate evidence of teaching ability and productive scholarship; and

2) the weights to be applied to the foregoing factors shall be based on the purpose(s) of the particular non-tenure-accruing appointments, and such weights shall be explicitly stated in the applicable letters of appointment or reappointment; and

c) Decisions regarding appointments, reappointments, and promotion of regular, active-status faculty for non-tenure-accruing positions at the rank of professor shall be based on published criteria that are substantially comparable (though not necessarily identical) to the published criteria that would be applied to faculty members serving in tenure-accruing appointments in the applicable department or nondepartmentalized school.

d) Teaching loads and service assignments for all regular, active-status faculty in a department or nondepartmentalized school should be structured so that during the term of each appointment, consistent with the University’s needs, each regular, active-status faculty member in that department or school has a reasonable opportunity to generate evidence of teaching ability and productive scholarship.

By Action of the George Washington University Board of Trustees, February 8, 2008, Article VI., beginning on Page 12, was amended by the addition of the following section:

D. Parental Childcare Leave: A regular, active-status member of the faculty shall be entitled to parental childcare leave upon certifying that he or she will provide at least half of the child's care during the leave period, subject to the terms and conditions set forth in this section. Parental childcare leave shall include release from teaching responsibilities and service responsibilities for one semester with full salary and benefits, and such leave shall terminate within twelve months after a minor dependent child is born or adopted or enters the faculty member's home under a foster care arrangement. During such leave, faculty members shall continue providing thesis and dissertation advising to students whom they advised prior to the leave unless adequate alternative arrangements are made. For faculty members engaged in externally funded grant or contract related activities, parental childcare leave shall include release from responsibilities to the University, but shall not include release from responsibilities to the external funding sources unless alternative arrangements are approved by such sources. A regular, active-status faculty member is entitled to parental childcare leave for a maximum of two minor dependent children who are born or adopted or enter the faculty member's home as foster children after the starting date of the faculty member's appointment to the University. Parental childcare leave under other circumstances or for other faculty, including leave with full or partial salary, may be granted at the discretion of the Vice President for Academic Affairs, after consultation with the appropriate department chair (if applicable) and dean.

By Action of the George Washington University Board of Trustees, May, 2008, Article I.B. was amended by the addition of the following new subsection:

6. Secondary and Courtesy Appointments: A faculty member holding a regular, active-status appointment in one department or school may be granted a secondary or courtesy appointment in another department or school for a specified term. A secondary or courtesy appointment shall require the recommendation of the appropriate faculty and officers of administration of the unit granting that appointment and shall comply with rules and procedures for such appointments established by the unit granting that appointment and by the Vice President for Academic Affairs. A secondary or courtesy appointment is not a regular, active-status appointment and does not automatically confer any of the rights provided by the Faculty Code and the Faculty Organization Plan to participate in faculty governance in the unit granting that appointment. Unlike a courtesy appointment, a secondary appointment shall allow a faculty member to exercise one or more specified governance privileges in the faculty unit granting the appointment, but such privileges shall be approved by that unit's regular, active-status faculty. A secondary or courtesy appointment terminates automatically upon the expiration of its specified term or upon termination of the faculty member's regular, active-status appointment. This paragraph does not affect the terms, conditions, and designations of secondary and courtesy appointments in existence as of May 1, 2008.

By Action of the George Washington University Board of Trustees, May 14, 2010, two amendments were made as follows:

Article I.B.1 (page 1) the language, "The foregoing shall not apply to the Medical Center faculty who are stationed at affiliated institutions ... was amended to read, "The foregoing shall not apply to the faculty of the School of Medicine and Health Sciences who are stationed at affiliated institutions."

In the **footnote on page 18** of the Code, the language, "In the governance of the Medical Center, all faculty eligible for membership ... " was amended to read, "In the governance of the School of Medicine and Health Sciences, all faculty of that School who are eligible for membership ..."

By Action of the George Washington University Board of Trustees, May 2011, the following new sentences were added after the second sentence of Article VII.B.

"Each faculty recommendation for an award of emeritus status shall be accompanied by evidence of the recipient's long and distinguished service to the University. Each such recommendation shall be presented and considered in accordance with the procedures set forth in Part B. of the *Procedures for the Implementation of the Faculty Code* governing faculty recommendations for appointments."

By Action of George Washington University's Board of Trustees, May 2014, Article II. of the *Faculty Code* was amended to read as follows:

“Subject only to legal restrictions and such guidelines as shall be recommended by the Faculty Senate and adopted by the University:

A. A faculty member shall enjoy freedom of expression. In the classroom (physical, virtual, and wherever located), a faculty member shall be guided by requirements of effective teaching, adherence to scholarly standards, and encouragement of freedom of inquiry among students. In speaking and writing outside the University, a faculty member shall not attribute his or her personal views to the University.

B. A faculty member shall enjoy freedom of investigation.

C. Consistent with academic freedom, faculty members should show respect for the opinions of others and foster and defend intellectual honesty, freedom of inquiry and instruction, and the free expression of ideas.

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Faculty Code Governing the Academic Personnel of the University

The Board of Trustees of The George Washington University, by virtue of the authority vested in it by the University Charter, hereby establishes the following Faculty Code. The Faculty Code applies to all University faculty in all colleges, schools, departments, and comparable educational divisions. Constitutions, by-laws, and established procedures of governance devised by subdivisions of the University are subordinate to the letter and spirit of the Faculty Code.

I. GRADES OF ACADEMIC PERSONNEL

The grades of academic personnel are:

A. Retired Status

University professor emeritus, professor emeritus, professor emeritus in residence, associate professor emeritus, associate professor emeritus in residence, and retired (in any given rank for age or disability).

B. Active Status

1. Regular: University professor, professor, associate professor, assistant professor, and instructor. Each of the regular, active-status ranks may be tenure-accruing or non-tenure-accruing as specified in the original letter of appointment. However, the proportion of regular, active-status faculty serving in non-tenure-accruing appointments shall not exceed 25 percent in any school, nor shall any department have fewer than 50 percent of its regular, active-status faculty appointments either tenured or tenure-accruing. The foregoing shall not apply to the Medical Center faculty who are stationed at affiliated institutions, nor to the faculties of the Law School or of the College of Professional Studies.

2. Limited Service: Adjunct professor, adjunct associate professor, adjunct assistant professor, adjunct instructor, clinical professor, professorial lecturer, associate clinical professor, associate professorial lecturer, assistant clinical professor, assistant professorial lecturer, clinical instructor, lecturer, studio instructor, special lecturer, fellow, teaching fellow, and graduate teaching assistant.

3. Visiting: Visiting professor, visiting associate professor, visiting assistant professor, and visiting instructor.

4. Research Staff: Members of the research staff may be appointed, upon recommendation of the appropriate faculty and officers of the administration, as research professor, associate research professor, assistant research professor, and research instructor. Such appointments do not provide tenure.

II. ACADEMIC FREEDOM

A. A faculty member shall enjoy freedom of investigation subject only to legal restrictions and such guidelines as shall be recommended by the Faculty Senate and adopted by the University.

B. A faculty member shall enjoy freedom of expression. In the classroom, a faculty member's exposition shall be guided by requirements of effective teaching, adherence to scholarly standards, and encouragement of freedom of inquiry among students. In speaking and writing outside the University, a faculty member shall not attribute his or her personal views to the University.

III. PROFESSIONAL RESPONSIBILITIES

A. Members of the faculty shall perform well their academic duties, strive for professional development, and apply their talents to the service of their professions and their community.

B. Members of the faculty are responsible for maintaining standards of professional ethics and for the fulfillment of faculty responsibilities.

C. Members of the faculty shall not permit their research to interfere with their teaching duties. In the classroom, they shall be responsible for the character of the instruction, the maintenance of good order, and the observance of University regulations. Faculty members shall make adequate preparation for their classes and conduct them in a dignified, courteous manner. They shall meet classes on time, hold classes for the full period, evaluate academic performance fairly and reasonably and report evaluations promptly, and report promptly to the appropriate dean matters requiring disciplinary action and matters relating to the physical condition of classrooms and laboratories. If a student alleges an instance of arbitrary or capricious academic evaluation, the allegation shall be heard and reviewed through orderly faculty peer review procedures established by the dean and faculty of the school in which the contested academic evaluation takes place; should such peer review processes find in favor of and uphold the complaint of the student, yet the faculty member persists in refusing to alter the academic evaluation at issue, the Dean's Council and dean shall afford the student an appropriate remedy after consultation with the peer review body.

D. Members of the faculty shall perform their other academic duties conscientiously; they shall attend faculty meetings, commencement exercises, convocations, and other academic events; serve on faculty or University committees; assist in the administrative work of their departments and in the general administrative work of the University; and serve as general or departmental advisers to students.

E. Members of the active-status faculty shall strive to grow in professional competence by means of effective teaching and sound scholarship. They shall strive for the advancement of knowledge in their fields by individual research and by participation in the activities of professional societies.

F. Regular, active-status members of the faculty shall have the primary responsibility of devoting their time, thought, and energy to the service of the University. No such member of the faculty shall accept an outside teaching appointment during the academic year or engage in any other regular activity of a remunerative nature without the approval of the University. Even when officially approved, such employment shall not be permitted to interfere with a faculty member's responsibility to the University.

IV. APPOINTMENT, REAPPOINTMENT, PROMOTION, AND TENURE

A. Appointment

1. Statements of Terms and Conditions

a) New faculty appointments shall be made by a letter signed by the appropriate corporate officer of the University. The appointee may accept the appointment by signing a copy of the letter of appointment and returning it to the University. A copy of this Code shall accompany or precede the letter of appointment and shall be considered part of the agreement between the faculty member and the University.

b) Tenured members of the faculty and faculty members (except those appointed in the Medical Center) whose appointments do not expire or whose appointments will be renewed shall be notified in writing annually, on or about May 15, of changes in rank or of other terms and conditions of service for the next academic year and further shall be notified annually in writing of changes in salary, no later than November 1.

2. Limited Service Appointments

All appointments to limited service active status (as defined in Article I, Section B, Paragraph 2) shall be for a specified period of a year or less. Such appointments may be renewed an unlimited number of times.

3.1 Regular Tenure-Accruing Appointments

a) All appointments or reappointments to regular, active-status positions shall be for a specified term except for those that confer tenure.

b) The total of such terms, including all full-time service at the rank of instructor or higher in this or other recognized institutions of higher learning, shall not exceed seven years. The following provisions apply:

1) A faculty member with more than three years' previous full-time service at another institution may be appointed at any rank below that of professor without tenure for four years as a term or condition of his or her initial appointment, even though his or her total period of service in the academic profession is thereby extended beyond seven years.

2) Leaves of absence to engage in authorized teaching or research activities at another institution shall be included in this seven-year period.

3) Leaves for study toward a degree, leaves for military or for personal reasons, and defense leave shall not be included in this period. A partial leave for family or medically related purposes of sufficient duration may justify an appropriate partial extension of the probationary period.

c) A faculty member of the rank of assistant professor or higher who will not be granted tenure at the end of the final year of his or her maximum term of appointment shall be so notified in writing no later than June 30 preceding the year in which his or her appointment will expire. However, notwithstanding any other provision of Articles IV and V of the Faculty Code, if a decision on tenure has not become final by such June 30 deadline due to a failure to resolve an administrative nonconcurrence with a faculty recommendation, the June 30 deadline may be extended for up to 60 days, provided the appropriate administrative officer has given written notice of such extension to the faculty member no later than the original June 30 deadline. A faculty member who does not receive notice of denial of tenure

by the date required under the preceding two sentences shall not be granted tenure at the end of his or her pending term of appointment, but instead shall be granted a one-year extension of such term. If not notified by June 30 of the final year of the non-extended term of appointment that tenure will not be granted, he or she will acquire tenure at the end of the extended term.

3.2 Regular Non-Tenure-Accruing Appointments

- a) Letters of appointment to positions that will not normally lead to the consideration of the appointee for tenure shall include a statement to that effect.
- b) Members of the faculty who are stationed at affiliated institutions and assigned to educational programs of the Medical Center and who have been appointed to regular, active-status positions without tenure prior to the effective date of this Code may continue to be appointed without tenure.

4.1 Stated Periods by Rank for Regular Tenure-Accruing Appointments

- a) Instructors
Instructors shall be appointed for an initial period of one year and may be reappointed for not more than three additional one-year periods. No reappointments shall, except by special action of the Board of Trustees upon recommendation by the appropriate faculty body and the appropriate officers of administration, extend any individual's total period as an instructor beyond four years. Tenure shall not be conferred at this grade.
- b) Assistant Professors
Assistant Professors may be appointed for a period of not more than three years and may be reappointed, with or without tenure, for one or more additional periods.
- c) Associate Professors
Associate Professors may be appointed with tenure or for a period of not more than four years without tenure, and may be reappointed, with or without tenure, for one or more additional periods.

d) Professors
Professors may be appointed with tenure or for a period of not more than three years without tenure.

e) University Professors
University Professors shall be appointed with tenure. The process of making such appointments shall be as follows:

- 1) The candidate shall be recommended by one or more departments or schools; and
- 2) The candidate shall be recommended by the Executive Committee of the Faculty Senate and/or by a faculty committee appointed by the President; and
- 3) The candidate shall be recommended by the Vice President for Academic Affairs and by the President, the appointment to be approved by the Board of Trustees.

4.2 Stated Periods by Rank for Regular Non-Tenure-Accruing Appointments

Faculty members with regular, non-tenure-accruing appointments at any rank may be reappointed to the same rank or to a higher one as many times as the needs of the University may require.

5. Criteria and Procedures for Appointments

Each school shall establish and publish criteria on which regular faculty appointments will be based. Additional criteria that may exist in the departments shall also be published. Each department or nondepartmentalized school shall establish and publish the procedures to be followed for recruitment, assembling all relevant information, and making recommendations for appointments to the regular faculty.

B. Promotion

1. Promotion shall be dependent upon professional competence as evidenced by teaching ability, productive scholarship, participation and leadership in professional societies, service to the University, and public service.

2. As general practice, a promotion shall be accompanied by an appropriate increase in salary.

3. Each school or comparable educational division shall establish and publish criteria on which promotion will be based. Additional criteria that may exist in departments shall also be published. Each department or nondepartmentalized school shall establish and publish the procedures followed for making decisions concerning promotions.

4. Each department or school shall establish procedures for periodically informing faculty members whether they are making satisfactory progress toward promotion.

C. Tenure

1. Tenure shall be dependent upon professional competence as evidenced by teaching ability, productive scholarship, participation and leadership in professional societies, service to the University, and public service. Upon a specific showing that the academic needs of the University have changed with respect to a particular position, that factor may also be considered in determining whether tenure shall be granted.

2. Each school or comparable educational division shall establish and publish criteria on which the granting of tenure will be based to implement the factors itemized in Paragraph 1. Such criteria shall be stated separately from the criteria for promotion. Any additional criteria for tenure that may exist in departments shall also be published. Each department or nondepartmentalized school shall establish and publish the procedures followed for making decisions concerning tenure.

3. To aid faculty members in assessing their potential for achieving tenure, each department, division, or comparable program shall establish procedures for informing individual faculty members, upon request, concerning probable status with regard to tenure. Such information will not constitute a commitment to recommend tenure.

D. School-Wide Personnel Committees

To implement the procedures required in Sections B.3 and C.2 above, each school shall establish a school-wide personnel committee, either as an elected standing committee or of the school faculty acting as a committee of the whole, to consider recommendations for appointments with tenure, for promotion, or for tenure of regular full-time faculty. Such committees may request additional information, documentation, or clarification respecting such recommendations. Further:

1. An elected standing committee, sitting in review of recommendations originating from a department or equivalent unit, shall advise the dean of that school whether the candidate has met the relevant school and department criteria and whether it has identified any "compelling reasons" that may exist for not following the departmental or unit recommendation. Such advisories shall not be construed as "faculty recommendations" as defined by Section B.3 of the Procedures for Implementation of the Faculty Code.

2. When the faculty of a school, sitting as a committee of the whole, serves as the school's personnel committee and initiates recommendations to the dean for appointments and actions affecting renewal of appointments, promotion, tenure designation, and termination of service, such recommendations shall be construed as "faculty recommendations" in the sense of the Procedures, Section B.3.

3. In the College of Professional Studies, the Dean's Council shall take the place of the elected standing committee or committee of the whole described in this Part D.

E. Nondiscrimination

Appointments, renewals, terminations, promotions, tenure, compensation, and all other terms and conditions of employment shall be made solely on the basis of merit and without regard to race, color, religion, sex, sexual orientation, national origin, or other considerations prohibited by law.

V. TERMINATION OF SERVICE

A. Expiration of Definite-Period Appointments

All appointments for a definite period of service expire automatically with the completion of such period of service, subject, as appropriate, to the safeguards specified in this Article and in Article IV.

B. Termination of Non-Tenured Appointments

1. Notice of Nonrenewal of Appointment

Written notice that an appointment is not to be renewed shall be given to a regular, active-status faculty member in advance of the expiration of his or her appointment, according to the following minimum periods of notice:

- a) Not later than March 1 of the first academic year of faculty service in the University in the case of a one-year appointment;
- b) Not later than December 1 of the second academic year of such service in the case of a two-year appointment or the renewal of a one-year appointment;
- c) Not later than June 30 preceding the final academic year after two or more academic years of service in the University.

2. Notice by Member of Termination or Declination of Renewal

A member of the faculty who desires to terminate an existing appointment or to decline a renewal shall give notice in writing no later than April 1 if the faculty member's rank is instructor or assistant professor, and no later than March 1 if the rank is higher, or within thirty days after receiving notice of the terms and conditions of service for the next academic year, whichever date is later; but the faculty member may properly request a waiver of this requirement in case of hardship or in a situation that might entail the denial of substantial professional advancement.

3. Dismissal and Late Notice

Dismissal of a faculty member during a non-tenured appointment, or the nonrenewal of such an appointment with less than the required advance notice, shall be preceded by a statement of reasons and shall be subject to the provisions of Article X of this Code.

C. Termination of Tenure

Grounds for termination: Until retirement of a faculty member in accordance with other provisions of this Code, and subject to the provisions of Article X, an appointment with tenure shall be terminable by the University only for adequate cause, termination of program, or on account of extraordinary financial exigency, in the latter two cases after not less than twelve months' notice to the faculty member.

1. Adequate Cause

Adequate cause shall mean unfitness to perform academic duties because of:

- a) incompetence;
- b) lack of scholarly integrity;
- c) persistent neglect of professional responsibilities under this Code; or
- d) gross personal misconduct that destroys academic usefulness.

2. Termination of Program

The University may be required to terminate the appointments of tenured faculty members as a result of the termination of an entire instructional program because of a substantial decline in enrollment in the program or because of the expiration of grants, contracts, or other sources of funding on which the program's financial viability depends.

3. Extraordinary Financial Exigency

The University may be required to terminate the appointments of tenured faculty members because of extraordinary financial exigency. This drastic measure shall be considered only as a last resort, after every effort has been made by the University administration and the Board of Trustees to meet the need in other ways.

4. Obligations of the University

a) Tenured faculty members shall not be dismissed because of termination of their program or extraordinary financial exigency until every effort has been made to place them in suitable positions elsewhere in the University.

b) If an appointment with tenure is terminated because of termination of a program or an extraordinary financial exigency, and, within two years, the program is reinstated or funds become available to restore the position, the released faculty member's place shall not be filled until he or she has been offered and declined reappointment.

c) Faculty members whose tenured appointments are terminated because of the termination of their program or because of an extraordinary financial exigency shall be provided severance payment of one year's salary beyond the date of termination of employment.

VI. LEAVE

A. When circumstances permit, for study or for any other valid reason, a leave of absence without salary, or a partial leave for family or medically related purposes with reduced salary, may be granted to a member of the faculty on approval of the department or other appropriate unit (if applicable), the appropriate dean(s), and the Vice President for Academic Affairs. Except for unpaid leaves of absence taken under the Family and Medical Leave Acts, unpaid leaves shall not normally exceed two consecutive academic years, although under unusual circumstances additional unpaid leave may be granted.

B. When circumstances permit, the Board of Trustees shall grant sabbatical leave to a member of the faculty who has served six or more continuous years in a college or university in regular active status, three years of which must have been served in this University, or who has served six or more years in regular active status after a preceding grant of sabbatical leave. The request for sabbatical leave must be accompanied by an outline of the education, research, and/or self-improvement program the applicant proposes to follow if the leave is granted. Such leave must be recommended by the department or other appropriate unit, concurred in by the appropriate administrative official of the corresponding school and the Vice President for Academic Affairs, approved by the President of the University, and granted by the Board of Trustees of the University. By accepting a grant of sabbatical leave, faculty members obligate themselves to continue in the service of the University for at least one year following their leave unless the University agrees to some other arrangement. When faculty members are eligible for sabbatical leave, but for reasons of school or departmental convenience or necessity have their leave deferred, their next eligibility for sabbatical leave shall be computed from the time they became eligible for such leave, not from the date the leave was actually granted. The University shall pay members of the faculty while on sabbatical leave 60% of their salary for two semesters or all of their salary for one semester. (The salary is paid as a compensation for the benefits received by the University from the efforts of the faculty member on leave.)

C. In the event of a national emergency, regular, active-status faculty members will be granted defense leave in accordance with the following provisions:

1. Members of the faculty given defense leave for the duration of an emergency will have the privilege of returning to the service of the University at the beginning of the semester following their release from service.

2. Members of the faculty on defense leave in a civilian status may be requested to return to the University and their defense leave terminated on sixty days' notice.

3. The return to University service of members of the faculty from defense leave is conditioned upon their mental, moral, and physical competence to resume their positions in the University.

VII. RETIREMENT

A. Subject to the needs of the University, a full-time member of the faculty who is fully retired may be invited by the appropriate officers of the University to continue on a part-time basis and appointed for a renewable period not to exceed one academic year. Such appointee shall be designated "emeritus (or retired) in residence."

B. A member of the faculty with long and distinguished service to the University may, upon retirement, be awarded emeritus status. Emeritus status is recommended by the regular, active-status members of the faculty concerned and, with the concurrence of the administration, is awarded by the Board of Trustees. Those eligible for consideration for emeritus status are University professors, professors, adjunct professors, clinical professors, research professors, associate professors, and associate clinical professors. Faculty members in emeritus status shall be entitled to use facilities as arranged with the administration of the University and to participate in faculty meetings without the right to vote. They may serve on committees and may perform such other services as are in keeping with their desires and with the needs of the University.

C. A retired faculty member may use facilities as arranged with the administration of the University and participate in faculty meetings without the right to vote.

D. Subject to programmatic needs, full-time tenured members of the faculty with ten years of continuous full-time service who are above 60 years

of age may elect to continue for a mutually agreed period on a half-time or two-thirds-time regular, active-status basis. Benefits and conditions of this reduced service will be as specified in the Faculty Handbook at the time the election is made to retire partially.

VIII. RETIREMENT ANNUITY

The retirement plan for faculty and staff is a defined contribution plan with investment options provided under agreements with TIAA and other carriers. Full-time and regular part-time members of the faculty (as defined in the Faculty Handbook) and those continuing in reduced service under the provisions of Article VII, Section D, are eligible to participate.

IX. FACULTY ROLE IN UNIVERSITY DECISION MAKING

A. The regular, active-status faculty shares with the officers of administration the responsibility for effective operation of the departments and schools and the University as a whole. In the exercise of this responsibility, the regular, active-status faculty plays a role in decisions on the appointment and promotion of members of the faculty and the appointment of the President, deans, departmental chairs, and other administrative officials with authority over academic matters. The regular, active-status faculty also participates in the formulation of policy and planning decisions affecting the quality of education and life at the University. This participation includes an active role in the development, revision, or elimination of curricular offerings of each department or school. The regular, active-status members of the faculty of a school are also entitled to 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. The Faculty Senate or an appropriate committee thereof is entitled to an opportunity to make recommendations on proposals

concerning the creation, consolidation, or elimination of schools or other major components of the University.

B. The faculty cannot perform an effective and responsible role in University decision making without the cooperation of the administrative officers of the University. This cooperation includes the provision of such information as is necessary to the development of sound, well-informed recommendations. Faculty bodies charged with responsibilities for particular policy and planning areas are entitled, to the extent feasible, to be informed sufficiently in advance of important decisions within their areas of competence to be able to provide their advice or recommendations to the appropriate University officials.

X. RIGHTS, PRIVILEGES, AND RESOLUTION OF DISPUTES UNDER THIS CODE

A. Rights and Privileges Under This Code

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

B. Grievances

To maintain a grievance, the complaining party must allege that he or she has suffered a substantial injury resulting from violation of rights or privileges concerning academic freedom, research or other scholarly activities, tenure, promotion, re-

appointment, dismissal, or sabbatical or other leave, arising from:

1. Acts of discrimination prohibited by federal or local law;
2. Failure to comply with the Faculty Code, or Faculty Handbook, or other rules, regulations, and procedures established by the University;
3. Arbitrary and capricious actions on behalf of the University, or arbitrary and capricious applications of federal or local statutes and regulations; or
4. Retaliation for exercise of Code-protected rights.

XI. HEALTH SERVICE

A. The University, recognizing the importance of the health of the teacher to professional competence, shall contribute to the cost of the current and any future basic health care program for all members of the faculty.

B. The facilities of the Emergency Room are available to members of the faculty in emergencies resulting from accidents or sudden, serious illness while on campus.

XII. CONSTRUCTION

As used in this Code and the Procedures for Implementation, words that may imply the masculine gender shall be construed to refer to both the masculine and the feminine genders.

XIII. EFFECTIVE DATE

Having been approved by the Board of Trustees of the University on February 28, 2003, this Code shall, as of that date, supersede all former codes and ordinances. The Board of Trustees of the University directs that this revised Faculty Code be published.

Procedures for the Implementation of the Faculty Code

A. Governance of Departments and Schools*

The regular, active-status faculty and tenured limited service faculty of each department, school, or comparable educational division shall establish written procedures for the governance of that unit.

B. Faculty Participation in Action Concerning Faculty Membership

1. The regular, active-status faculty of each school or comparable educational division shall establish procedures enabling an elected standing committee or committee of the whole to submit its recommendations on the allocation of regular-service, tenure-accruing appointments within that unit.

2. The regular, active-status faculty of the rank of assistant professor or higher of a department or of a nondepartmentalized school or comparable educational division shall, subject to such limitations or guidelines as may be established by the faculties of the respective schools, establish procedures enabling an elected standing committee or a committee of the whole to submit its recommendations for appointments. Recommendations for actions other than appointments concerning instructors, assistant professors, or associate professors shall be determined by the tenured members of the faculty of higher rank or of equal and higher rank, as the faculty may have determined by previously established procedures. Recommendations for actions other than appointments concerning professors shall be determined by tenured members of the rank of professor. In the College of Professional

Studies, the Dean's Council shall take the place of the elected standing committee or committee of the whole described in this paragraph 2.

3. Appointments and actions affecting renewal of appointments, promotion, tenure designation, and termination of service shall normally follow faculty recommendations. Departures from this standard shall be limited to those cases involving compelling reasons. The appropriate administrative officer shall notify the Executive Committee of the Faculty Senate of any departures from faculty recommendations and the compelling reasons therefor. The faculty or the appropriate unit thereof shall also be notified unless the Board of Trustees determines that such notification would be contrary to the best interest of the individual or individuals concerned.

4. Faculty recommendations concurred in by the appropriate administrative officers shall be transmitted by them to the President, who shall transmit them to the Board of Trustees. Variant or nonconcurring recommendations from an administrative officer, together with supporting reasons, shall be sent by that officer to the Executive Committee of the Faculty Senate through the appropriate superior administrative officers. The Executive Committee may seek information and advice and make recommendations to the faculty or the appropriate unit thereof and to the appropriate administrative officers. If concurrence cannot be obtained after opportunity for reconsideration in the light of the recommendations of the Executive Committee, the recommendations of the appropriate administrative officers, accompanied by the recommendation of the faculty and the report of the Executive Committee, shall be transmitted to the Board of Trustees through the President, except that, at its discretion, the originating faculty unit may instead elect to leave the decision to the President.

* In the governance of the Medical Center, all faculty eligible for membership in the Medical Center Faculty Assembly shall be eligible to participate whenever the term "regular" faculty appears in this document.

**C. Faculty Consultation and Recommendation
in the Selection and Continuance of
Academic Administrative Officers**

1. Department Chairs

The regular, active-status faculty members of a department of the rank of assistant professor and higher shall, subject to such limitations or guidelines as may be established by the faculties of the respective schools, formulate procedures for making recommendations for filling vacancies in the post of department chair. The procedures shall provide for an elected committee of the regular, active-status members of the department, or an appropriate interdepartmental committee, to recommend a candidate for the position. Normally, the appointment shall be made in accordance with the recommendation. Should the appointing official not concur with the committee's recommendation, that official shall so inform the department concerned and shall indicate the reasons therefor. The committee shall, after consultation with the appointing official, make alternative recommendations until a nomination acceptable to both the department and the appointing official is reached.

**2. Deans, Associate Deans, Assistant Deans, and
Similar Academic Administrative Officers**

a) The academic administrative officers, such as deans, associate deans, assistant deans, Vice President for Health Affairs, or other academic administrative officers of similar rank of a school or other academic unit shall be qualified for faculty membership by training and experience.

b) Appointments to such positions shall be made only after a special or standing committee, elected by the regular, active-status faculty involved from among the faculty's tenured members, has established criteria (subject to the approval of that faculty as a whole), considered nominations, and reported its recommendations in accordance with the procedures established under Section A, above, to the faculty that elected it or to the appropriate academic

administrative officer. In the College of Professional Studies, the special faculty committee performing this function shall be appointed jointly by the Vice President for Academic Affairs and the deans of the schools whose programs are most directly affected by the College of Professional Studies.

c) Such appointees shall hold office only as long as they retain the confidence of the faculty concerned. A formal proceeding to question the continued confidence of the faculty of a school in an academic administrative officer shall be instituted only after faculty members have made a reasonable effort to bring the substance of their concerns to the attention of such officers informally. The formal proceeding shall be conducted as follows:

1) A petition signed by one-third of the regular, active-status members of the rank of assistant professor or higher of the faculty concerned shall be submitted to the Chair of the Executive Committee of the Faculty Senate.

2) The Chair of the Executive Committee shall call a special meeting of the faculty concerned for consideration of the matter. The meeting shall be held within twenty days (on which classes are regularly held in the University) of the time the petition is submitted. Notice of the meeting shall be given to all of the faculty members eligible to vote on the matter.

3) The Chair of the Executive Committee shall preside over the meeting. At this meeting, procedures for balloting shall be determined.

4) Within ten days (on which classes are regularly held in the University) of the first special meeting, a secret ballot of the regular, active-status faculty of the rank of assistant professor or higher shall be taken at a special meeting or by mail on the question of confidence in the administrator involved. The balloting shall be supervised by the Executive Committee of the Faculty Senate.

5) The affirmative vote of a majority of faculty members eligible to vote shall be necessary for the passage of a vote of no confidence. If the resolution

passes, the Chair of the Executive Committee shall forward the results of the proceedings to the President of the University for appropriate action.

3. Vice President for Academic Affairs, Associate or Assistant Vice Presidents for Academic Affairs

Appointments to the position of Vice President for Academic Affairs or Associate or Assistant Vice President for Academic Affairs shall be made only after consultation with the Executive Committee of the Faculty Senate. The Executive Committee may submit names of proposed candidates for these positions and may advise concerning names proposed by administrative officers. Appointees to these positions shall be qualified for faculty membership by training, experience, and continued interest in teaching and research. They shall retain office only as long as they retain the confidence of the Faculty Assembly.

4. Other Administrative Officers

a) The faculty of a school, division, or other organizational unit or group of units shall be consulted for its recommendations regarding the appointment of administrative officers whose concern with academic matters is limited to that unit or group of units. The regular, active-status faculty members of the rank of assistant professor and higher of the organizational unit or units concerned shall establish procedures and criteria for the formulation of such recommendations.

b) The Executive Committee of the Faculty Senate shall be consulted for its recommendations regarding the appointment of administrative officers whose concern with academic matters comprehends all or substantially all of the University.

5. President of the University

The Faculty Assembly shall elect a committee to advise and consult with the Board of Trustees or appropriate members thereof in the selection of a President.

D. Faculty Participation in Action Concerning Curriculum

1. The regular, active-status faculty members of the rank of assistant professor and higher of each school shall establish procedures for their participation, directly or through elected standing committees, in decisions relating to the addition, revision, or elimination of curricular offerings. In the College of Professional Studies, the Dean's Council shall establish procedures for faculty participation in such decisions.

2. At least half of the members of the Dean's Council of the College of Professional Studies shall be tenured faculty members of the schools affected most directly by the College, and those members of the Dean's Council shall be elected by the faculties of their respective schools.

3. The College of Professional Studies shall not initiate a degree program that duplicates a degree program offered by another school. The College shall not initiate a degree program that overlaps substantially with a degree program offered by another school, unless (a) the Dean's Council of the College has approved that program, and (b) the appropriate corporate officer of the University has authorized the College to initiate that program after consulting with the faculty of the other school.

4. The College of Professional Studies shall not confer any degree that duplicates a degree offered by another school. Each degree conferred by the College (whether at the associate's, bachelor's, or master's level) shall carry the designation "of Professional Studies."

5. Prior to the end of each academic year, the Dean's Council of the College of Professional Studies shall submit a written report to the Faculty Senate. Each annual report shall describe the procedures established and other actions taken by the Dean's Council to: (a) facilitate faculty participation in the appointment and promotion of faculty members and in decisions relating to the addition, revision or elimination of curricular offerings of the College;

and (b) address issues arising out of potential substantial overlaps between degree programs offered or proposed to be offered by the College and degree programs offered by other schools.

E. Procedures for Implementation of Article X of the Faculty Code

1. Informal Resolution

Before instituting a formal grievance, the aggrieved party shall make all reasonable efforts to achieve a resolution of the situation through informal consultation with the appropriate faculty members and administrative officers.

2. Dispute Resolution Committee

The Faculty Senate shall elect a Dispute Resolution Committee of fifteen tenured, active-status faculty members, no more than three of whom shall be members of the faculty of any one school (except that four may be members of the faculty of Columbian College and four may be members of the Law School) and none of whom may be serving as academic administrators. The members of the Committee shall serve three-year staggered terms so that the terms of five of the members shall expire each year. The Faculty Senate shall designate the Chair of the Committee from among the members of the Committee. Alternate temporary members may be appointed at any time by the Executive Committee to facilitate the dispute resolution procedures.

3. Preliminary Proceedings

If informal consultation fails to resolve the matter or if the aggrieved party concludes that such consultation is not feasible or would be futile, the aggrieved party shall refer the dispute to the Dispute Resolution Committee by means of a letter addressed to the Chair with copies sent to the Chair of the Executive Committee of the Faculty Senate and to the Vice President for Academic Affairs on behalf of the University. The letter shall identify the general nature and circumstances of the dispute. Unless either the University or the aggrieved party

objects, the Chair of the Dispute Resolution Committee shall promptly appoint a special mediator of appropriate qualifications to assist the University and the aggrieved party to resolve the dispute. The special mediator shall report to the Chair of the Dispute Resolution Committee that a mutually satisfactory solution has been achieved, in which case the grievance shall be dismissed, or that efforts at mediation were unsuccessful.

4. Formal Proceedings

a) Commencement of Proceedings

1) If either party declines to mediate or to continue to mediate, or if efforts at mediation are unsuccessful, the aggrieved party may commence formal proceedings by means of a grievance sent to the Chair of the Dispute Resolution Committee, with copies sent to the Chair of the Executive Committee of the Faculty Senate and to the Vice President for Academic Affairs on behalf of the University.

2) The grievance shall identify the aggrieved party as the "Grievant" and shall name The George Washington University as the "Respondent." A grievance may not be brought against faculty members of the University, acting in their individual capacities as faculty members. Consistent with Article X.B., a grievance may only be maintained against the University for official acts. The Vice President for Academic Affairs shall identify the appropriate faculty member or administrative official who shall act on behalf of the University as Respondent.

3) The grievance shall set forth with particularity the nature of the dispute, specifying, consistent with Article X. B., the rights or privileges under the Faculty Code alleged to have been violated, the specific act or acts alleged to constitute the violation, and the remedy sought. The grievance shall also set forth the Grievant's efforts to resolve the dispute informally, or if no such efforts were made, the reasons for failing to make such efforts. No grievance may be maintained on the basis of error that did not affect the substantial rights of the Grievant.

4) Within twenty calendar days of receipt of the grievance the University shall reply in writing, sending copies of the reply to the Chair of the Dispute Resolution Committee, the Chair of the Executive Committee of the Faculty Senate, and the Grievant. The reply shall set forth with particularity the position of the University with respect to each allegation of the grievance.

b) Hearing Committee and Hearing Officer

1) Within a reasonably prompt period of time, ordinarily within ten calendar days of receipt of the grievance and reply, the Chair of the Dispute Resolution Committee shall appoint a Hearing Committee of three members from among the members of the Dispute Resolution Committee. The Chair of the Dispute Resolution Committee shall designate one member of the Hearing Committee to serve as the presiding Hearing Officer. The Hearing Officer shall have appropriate experience and training but need not be an attorney. The Hearing Officer, in addition to serving as a full member of the Hearing Committee, shall assure an orderly, expeditious, and relevant hearing, assure the development of a complete, fair, and reliable record, and advise the Hearing Committee as to issues of substance and procedure.

2) No member of the same department as the Grievant shall sit on the Hearing Committee. Any party to a dispute may disqualify one member of the Hearing Committee by peremptory challenge. Any party may also seek to disqualify any member of the Hearing Committee for cause. The Chair of the Dispute Resolution Committee shall decide any challenges for cause, based on written submissions from the parties. The Chair of the Dispute Resolution Committee shall, from among the remaining members of the Dispute Resolution Committee, fill any vacancies on the Hearing Committee created by challenges.

3) When all challenges have been decided and vacancies filled, and as soon as reasonably possible after receipt of the grievance and reply, the Hearing Officer shall convene the Hearing Committee to

review the grievance. If a majority of the Hearing Committee, after an opportunity for argument by the parties, finds that the grievance does not allege facts sufficient to state a grievance under the Code, or that the grievance is based on evidence or allegations substantially the same as those that have previously been heard or decided, or that could have been presented in a previous hearing, the grievance shall be automatically referred to the Dispute Resolution Committee for consideration at the earliest reasonable time. If a majority of the Dispute Resolution Committee, after an opportunity for argument by the parties, agrees that for any of the reasons set out in this section a hearing is not warranted, the grievance shall be dismissed, in whole or in part, and the matters dismissed shall be deemed closed.

4) On the determination that a hearing is warranted, the Hearing Officer shall promptly convene the Hearing Committee, which shall establish a schedule for the hearing. Grievances shall be heard and decided with reasonable dispatch, and, ordinarily, shall be completed by the Hearing Committee within three months after the determination that a hearing is warranted. However, due consideration shall be given to the University's normal academic calendar.

5) Members of the Hearing Committee shall be present during the hearings and deliberations of the Committee, except that the presence during part of the proceedings of one of the two not serving as the Hearing Officer may be waived by agreement of the parties.

6) It shall be the duty of the Hearing Officer to convene promptly the meetings of the Hearing Committee and to preside; to assure the expeditious disposition of the case; to rule on all questions of procedure necessary to the conduct of the hearing, subject to being overridden by the other two members of the Hearing Committee; to control the development of testimony and of evidence in the record; to prepare or assign the writing of an opinion on behalf of the Hearing Committee; and to

advise the Hearing Committee in its deliberations on questions of substance and procedure. The Hearing Officer is a full member of the Hearing Committee, and the Hearing Committee shall decide all ultimate questions of fact, substance, procedure, or policy, by majority vote. The Hearing Officer shall sign dispositive orders on behalf of the Hearing Committee.

7) Members of the Hearing Committee, members of the Dispute Resolution Committee, and the parties shall avoid ex parte communications bearing on the substance of the dispute.

c) Procedure for Hearings

1) The parties to the proceedings shall be entitled to appear in person and to be represented by counsel or other adviser.

2) A grievance procedure is not a formal judicial proceeding. Its purpose is to provide a fair evaluation of an allegation that a right or privilege has been violated. In order to achieve that end, the Hearing Committee shall have authority to call any material witness who is a member of the University faculty, administration, or staff and any other person who is willing to testify; to question parties and witnesses; to exclude matters it deems irrelevant; to place reasonable limits on arguments, the presentation of evidence, and the questioning of witnesses by the parties. The University will make a reasonable effort to facilitate the appearance of all faculty, administration, and staff reasonably called to testify.

3) The procedure at the hearings shall be informal but shall comply with the requirements of fairness to the parties. The Hearing Committee is not required to comply with rules of evidence applicable in courts of law and may receive any relevant evidence that is not privileged. The Hearing Committee may decline to consider evidence when its probative value is outweighed by considerations of unfair prejudice, confusion of the issues, undue delay, waste of time, or needless presentation of cumulative evidence. The parties shall be entitled to testify on their own behalf; to call as material wit-

nesses any member of the University faculty, administration, or staff and any other person who is willing to testify; to present written and other evidence; and to cross-examine witnesses called by other parties. A party shall be entitled to inspect and copy, in advance of the hearing, all relevant documents in the control of the other party and not privileged and may offer such documents or excerpts therefrom in evidence.

4) The parties shall be entitled to present opening and closing statements.

5) A stenographic record or tape recording of the hearings shall be made and one copy, which shall be available to all parties, kept on file by the University.

6) The hearings shall be open to the public unless, on the motion of a party or the Hearing Committee, the Hearing Committee shall determine that it is in the best interest of the University and the parties that the hearings be closed.

7) At the conclusion of the presentation of evidence and argument from both sides, the Committee shall convene in closed session to deliberate and reach a decision. In rendering its decision, the Hearing Committee shall not substitute its judgment for that of the maker of the decision being challenged. Rather it shall determine whether the Grievant has established by clear and convincing evidence that he or she has suffered a substantial injury pursuant to Article X, Section B.

8) The Hearing Committee shall render its findings and recommendations in a written opinion that shall state the number of members subscribing to the opinion and shall include dissenting opinions, if any. This opinion shall be submitted to the Chair of the Dispute Resolution Committee, and copies shall be transmitted to the parties and to the Chair of the Executive Committee of the Faculty Senate.

9) The hearing procedures shall be concluded and the Hearing Committee's findings and recommendations shall be rendered as soon as practicable.

5. Appeals

a) Any party may appeal the findings and recommendations of the Hearing Committee by filing a notice of appeal with the Chair of the Dispute Resolution Committee and sending copies thereof to the Chair of the Executive Committee of the Faculty Senate and to the other parties. The notice of appeal must be filed within ten calendar days of the receipt of the decision of the Hearing Committee.

b) An appeal shall be heard by members of the Dispute Resolution Committee who were not members of the Hearing Committee, provided that members of the Dispute Resolution Committee who were disqualified from sitting as members of the Hearing Committee and members of the same department as the Grievant shall not participate in the hearings of the appeal. A quorum for hearing an appeal shall be two-thirds of those members of the Dispute Resolution Committee eligible under the terms of this section.

c) The parties to an appeal shall be entitled to present written and oral argument. However, evidence not introduced in the hearing may not be considered on appeal.

d) The Dispute Resolution Committee shall decide by majority vote and render an opinion in writing, sustaining, modifying, overruling, or remanding the decision of the Hearing Committee.

6. Recommendations

A Hearing Committee and the Dispute Resolution Committee may recommend that the University action being challenged be upheld, modified, reconsidered or remanded under specified conditions, or reversed, in whole or in part. A Hearing Committee and the Dispute Resolution Committee may not include as part of their recommendations any monetary damages, punitive damages, or any other actions or measures outside of the scope of the underlying University action being challenged.

7. Final Disposition

In the absence of a timely appeal filed by either party from a decision of a Hearing Committee, or after a decision of the Dispute Resolution Committee, such decision shall be transmitted to the parties, to the Chair of the Executive Committee of the Faculty Senate, and to the Vice President for Academic Affairs. The decision of the relevant Committee shall be deemed final and shall be implemented by the University unless the Vice President for Academic Affairs determines that there are compelling reasons not to implement the relevant Committee's decision. In the event of such a determination, the Vice President shall transmit his or her determination (including an explanation of such compelling reasons) and recommendation, and the record of the case, through the President of the University to the Board of Trustees, or, at the election of the Grievant, solely to the President, with copies to the Grievant and the Chairs of the Dispute Resolution Committee and the Executive Committee of the Faculty Senate, for a prompt decision of the President or the Board of Trustees.

F. Procedures for the Dismissal of a Faculty Member for Adequate Cause

1. Commencement of Proceedings

a) Proceedings to dismiss a tenured faculty member for adequate cause may be commenced by a complaint, addressed to the Chair of the Dispute Resolution Committee, signed by the Vice President for Academic Affairs and either the dean or the department chair who has administrative responsibility for the faculty member concerned. The complaint shall set forth the grounds alleged to constitute adequate cause for dismissal. A copy of the complaint shall be delivered in hand to the faculty member concerned or shall be sent by registered mail to the faculty member's residence. A copy of the complaint shall also be sent to the Chair of the Executive Committee of the Faculty Senate.

b) Proceedings may also be commenced by a petition, setting forth the grounds alleged to constitute adequate cause for dismissal and signed by a majority of the tenured faculty of the school of the faculty member concerned, or by twenty tenured members of that faculty, whichever is the lesser. A copy of the executed petition shall be delivered in hand to the faculty member concerned or sent by registered mail to his or her residence. Copies shall also be sent to the Chair of the Dispute Resolution Committee, the Chair of the Executive Committee of the Faculty Senate, and the Vice President for Academic Affairs.

c) Within twenty calendar days of the receipt of the complaint, the faculty member concerned shall reply in writing, sending copies of the reply to the Chair of the Dispute Resolution Committee, the Chair of the Executive Committee of the Faculty Senate, and the Vice President for Academic Affairs. The reply shall set forth with particularity the responding faculty member's position with respect to each allegation of the complaint.

2. Hearing Committee

a) Upon receipt of the complaint, the Chair of the Dispute Resolution Committee shall, with the advice of the Executive Committee of the Faculty Senate, appoint a Hearing Committee of six members from among the members of the Dispute Resolution Committee.

b) No member of the same department as the faculty member concerned and no one who has signed a petition seeking that faculty member's dismissal shall sit on the Hearing Committee. The faculty member concerned may disqualify two members of the Hearing Committee by peremptory challenge and may also seek to disqualify a member of the Hearing Committee for cause. The Dispute Resolution Committee shall hear and decide any challenges for cause. The Chair of the Dispute Resolution Committee shall, from among the remaining members of the Dispute Resolution Committee, fill any vacancies on the Hearing Committee created by challenges.

c) When all challenges have been decided and vacancies filled, the Hearing Committee shall convene, establish a schedule for the hearings, and elect a chair from among its members to preside during the formal proceedings.

d) All of the members of the Hearing Committee shall be present during the hearings and deliberations of the Committee except that the presence of one of them during part of the proceedings may be waived by agreement of the parties.

3. Procedure for Hearings

The procedure for the hearings shall be the same as provided in Part E of these Procedures, except that the hearing shall be closed on the motion of the faculty member concerned, and that the Hearing Committee may recommend the dismissal of the faculty member concerned only by the affirmative vote of two-thirds of its members.

4. Appeals

The faculty member concerned may appeal the decision of the Hearing Committee in accordance with the procedures provided in Part E, Paragraph 5, of these Procedures.

5. Attorneys' Fees and Expenses

If a faculty member prevails against charges brought against him or her, the University may, upon recommendation of the Hearing Committee, reimburse the faculty member concerned for all or part of attorneys' fees and expenses actually incurred in his or her defense.

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