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**MEMORANDUM**

**To:** Donna E. Shalala, President

**From:** Richard L. Williamson  
Chair, Faculty Senate

A handwritten signature in black ink, appearing to read 'Richard L. Williamson'.

**Date:** April 22, 2010

**Subject:** Faculty Senate Legislation #2009-28(B) – Revisions to the *Faculty Manual* Section B4.9, Committee on Professional Conduct and relevant section C15.2, Preliminary Proceedings Concerning the Fitness of a Faculty Member

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At its April 21, 2010 meeting, the Faculty Senate approved the proposed revisions to the *Faculty Manual* Section B4.9, Committee on Professional Conduct and relevant section C15.2, Preliminary Proceedings Concerning the Fitness of a Faculty Member.

The proposal is enclosed for your reference.

This legislation is now forwarded to you for your action.


RW/rh

Enclosure

cc: Thomas LeBlanc, Executive Vice President and Provost  
David Birnbach, Vice Provost, Faculty Affairs

CAPSULE: Faculty Senate Legislation #2009-28(B) – Revisions to the *Faculty Manual* Section B4.9, Committee on Professional Conduct and relevant section C15.2, Preliminary Proceedings Concerning the Fitness of a Faculty Member

**PRESIDENT'S RESPONSE**

APPROVED:  DATE: 4/28/2010  
(President's Signature)

OFFICE OR INDIVIDUAL TO IMPLEMENT: FACULTY SENATE

EFFECTIVE DATE OF LEGISLATION: \_\_\_\_\_  
(if other than June 1 next following)

NOT APPROVED AND REFERRED TO: \_\_\_\_\_

REMARKS (IF NOT APPROVED): \_\_\_\_\_

**Proposed:**

B4.9 (a) The COMMITTEE ON PROFESSIONAL CONDUCT (CPC) has jurisdiction over complaints that a member of the UNIVERSITY FACULTY has committed unprofessional conduct.

- (b) The CPC consists of eleven to twenty members, elected annually by the Faculty Senate. Each member shall be a tenured faculty member, ordinarily with the rank of full Professor and with substantial time on the University faculty. No member shall be a member or alternate member of the Senate, nor may a member be the holder of any administrative position specified in section A7.1(f) or (g).
- (c) A complaint that a member of the UNIVERSITY FACULTY has engaged in unprofessional conduct can be brought:
  - (i) either by the University, acting through the President, the Provost, the Vice Provost for Faculty Affairs, or an Academic Dean. Before the University may file a complaint under this sub-paragraph, a thorough investigation must take place; or
  - (ii) by a member of the UNIVERSITY FACULTY who does not fall within (c)(i).
- (d) The complaint shall be addressed to the Chair of the Faculty Senate in writing. The complaint shall include, at a minimum:
  - (i) a brief recitation of the alleged conduct and when it occurred;
  - (ii) a concise statement as to why, in the opinion of the complaining party, the conduct is unprofessional; and
  - (iii) a declaration that all attempts at informal resolution have been exhausted, or an explanation as to why, in the opinion of the complaining party, further attempts at informal resolution would be pointless.
- (e) Except as provided in paragraphs (f) or (h), upon receipt of a complaint meeting the requirements of paragraphs (c) and (d), the Chair of the Faculty Senate must appoint a hearing panel for the case as soon as it is feasible to do so.
- (f) The Chair of the Faculty Senate may not appoint a hearing panel if:
  - (i) the complaint, even if assumed to be correct in all its factual allegations, does not allege conduct that any reasonable hearing panel could construe as unprofessional; or
  - (ii) the gap between the time in which the allegedly unprofessional conduct occurred and the filing of the complaint is so great as to make the complaint untimely in terms of the availability of evidence and witnesses, prejudice to the accused, or other relevant factors.
- (g) If the complaining party disagrees with the decision of the Chair of the Faculty Senate under paragraph (f), the party may appeal the ruling to the Committee on General Welfare within 10 academic working days from the date the Chair's decision is sent to the complaining party. The Committee on General Welfare has 10 academic working days from the time of receipt of the appeal in which to render a decision. At its sole discretion, it may make the decision on the basis of written documents, or may request the complaining party and the Chair of the Faculty Senate to make oral presentations.
- (h) The Chair of the Faculty Senate has the discretion not to appoint a hearing panel if the same or substantially the same conduct is under investigation by the Committee

to Investigate Misconduct in Research, by the Faculty Sexual Harassment Officer, by the Senate's Committee on Rank, Salary and Conditions of Employment, or by the Faculty Hearing Committee as these roles are specified in the Faculty Manual. The Chair has similar discretion if the matter is subject to an indictment or information by a State or Federal prosecutor. Any decision not to appoint a hearing panel on one of the grounds listed in this paragraph is without prejudice to the filing of a complaint after such investigations or proceedings have concluded.

- (i) The hearing panel for a particular case shall consist of three members of the CPC selected by the Chair of the Faculty Senate. To the extent feasible, the selected members of the hearing panel shall include one member who has had legal training. No member of the hearing panel may be:
  - (i) from the same department or undepartmentalized school as the accused;
  - (ii) from the same department or undepartmentalized school as the complainant in the case of a complaint filed pursuant to paragraph (c)(ii); or
  - (iii) a relative or domestic partner of the accused, of the complainant, or of an individual who holds one of the offices listed in (c)(i).
  
- (j) As soon as the hearing panel is constituted, the Secretary of the Faculty Senate shall forward a copy of the charges to the accused and the complainant, notifying them of the following matters in writing:
  - (i) the appointment of the hearing panel and the names of its members;
  - (ii) the requirement that the accused provide a brief reply to the charges;
  - (iii) the requirement that any communications related to the matter before the hearing panel by a party or that party's counsel with the panel, with the other party, or with any official listed in (c)(i) be made only through the Faculty Senate Office; and
  - (iv) the procedures by which the hearing panel will carry out its work.
  
- (k) In the case of a complaint filed by the university pursuant to paragraph (c)(i):
  - (i) The hearing panel shall hold a hearing promptly after its appointment.
  - (ii) The hearing panel must present its final report within 30 academic working days, measured from the receipt of the complaint by the hearing panel to the date a final report is sent to the President and Senate, unless the Chair of the Faculty Senate, for good cause, grants an extension of not more than 20 academic working days.
  - (iii) The accused shall have the right to represent him or herself or to be represented at the hearing by academic counsel or legal counsel. The University shall be represented by the Office of the General Counsel. However, the university may utilize outside counsel if the accused decides to be represented by legal counsel.
  
- (l) In the case of a complaint filed by a faculty member pursuant to paragraph (c)(ii):
  - (i) The complaint shall be investigated by one or more investigators appointed by the Chair of the Faculty Senate from the membership of the CPC. No investigator may be a member of the hearing panel for the same case, nor may an investigator be appointed who is excludable from panel membership for the same case under the provisions of paragraph (i).
  - (ii) The accused and the complainant each have the right to explain the facts and circumstances to the investigators, but without counsel present. The accused also has the right, without prejudice, to decline to speak with the investigators.

- (iii) The investigators shall report their findings in detail to the hearing panel as quickly as a careful investigation will allow, but in any event within 30 academic working days.
  - (iv) If upon consideration of the report by the investigators, the hearing panel concludes that there appear to be sufficient facts which, if established at a hearing, make it more likely than not that unprofessional conduct has taken place, a hearing shall be held promptly.
  - (v) From the date the hearing panel receives the report of the investigators, the hearing panel has 20 academic working days to conduct the hearing and present its report to the President and Senate, unless the Chair of the Faculty Senate, for good cause, grants an extension of not more than 20 academic working days.
  - (vi) The accused and the complainant shall have the right to be represented at the hearing by academic counsel or legal counsel. The Office of the General Counsel may participate at its discretion.
- (m) In any hearing pursuant to this section:
- (i) A hearing panel member or investigator has a duty to recuse him or her self if there would be, or there would appear to be a conflict of interest or any reason why the panel member could not be neutral and impartial. The accused shall have the right to request that the Chair of the Faculty Senate remove a panel member for good cause shown.
  - (ii) The accused has a right to waive the hearing, in which case the decision of the hearing panel shall be based on the information already available to the hearing panel. The accused also has the right, without prejudice, to decline to speak during the hearing.
  - (iii) The accused may plead guilty to one or more of the charges, in which case, the hearing will then be held concerning the remaining charges, if any.
  - (iv) The panel may, at its discretion, require the filing of briefs, memoranda or other documents by the parties before or during the hearing, and may issue orders governing the conduct of the hearing and the panel's processes.
  - (v) The complainant, the accused, and the General Counsel's office shall have the right to make opening and closing statements; to examine all briefs, and other documents presented to the hearing panel; and to present, examine, and cross examine witnesses.
  - (vi) The accused has the right, during or after the hearing but before the panel concludes its report, to make an oral statement or to file a written statement to the hearing panel explaining matters in mitigation.
- (n) If the hearing panel has reason to believe that an individual acting as complainant or witness has knowingly introduced evidence that has been fabricated or has knowingly given false testimony, the panel may recommend:
- (i) in the case of a faculty member, that the Chair of the Faculty Senate bring a charge of unprofessional conduct against the faculty member; or
  - (ii) in the case of an employee who is not a faculty member, that the Chair of the Faculty Senate bring the matter to the attention of one or more appropriate administrators.
- (o) In the event that the hearing panel concludes that no unprofessional conduct has taken place, or that only a trivial or technical violation has taken place, it shall prepare a report to the Chair of the Faculty Senate briefly explaining its conclusions. At its discretion, the hearing panel may comment on matters it believes

should be rectified or reformed, and may request that these comments be forwarded to the Senate, the President, and/or other appropriate administrative officials. The Chair of the Faculty Senate shall then dismiss the case and make a report to the Committee on General Welfare, taking care to protect privacy and confidentiality.

- (p) If the hearing panel determines that unprofessional conduct has taken place, and that the conduct was not merely a trivial or technical violation, it shall prepare a report to the Chair of the Faculty Senate and to the President. It shall recommend one or more of the following as sanctions:
- (i) *Censure by the Senate.* If the Senate concurs with the recommendation of censure, it shall decide on the text of the censure resolution, on the means and extent of publication of the resolution, on whether the censure resolution shall be made a part of the faculty member's personnel records, and on whether the member shall be barred or suspended from service on the Senate.
  - (ii) *Dismissal,* in accordance with the procedures specified in section C15 of the Faculty Manual.
  - (iii) *Sanctions by the President other than dismissal.* The President may take one or more of the following actions: restrictions on pay increases for a period of years; a one time reduction in pay not to exceed 10% of base pay; required counseling or training; loss of rights to have graduate Research Assistants or Teaching Assistants; and/or termination of appointment to an Administrative position. The President is not required to impose the sanctions recommended by the hearing panel, but shall explain in writing to the Senate the reasons for imposing sanctions that differ from the hearing panel's recommended sanction(s).
- (q) Nothing in this section shall be interpreted to preclude a mutually satisfactory settlement between the complainant and the accused (for a case filed under paragraph (c)(ii)). A mutually satisfactory settlement may also be reached between the university and the accused (for a case filed under (c)(i)), provided, that such a settlement may not adversely affect the interests of third parties. Any settlement must be reached prior to the time the hearing committee files its report to the Senate. If a settlement is reached, the Chair of the Faculty Senate shall dismiss the case.
- (r) The Senate shall adopt and publish written procedures as Class D legislation for:
- (i) Filing and processing complaints;
  - (ii) Appointment of investigators and hearing panel members;
  - (ii) The conduct of hearings; and
  - (iii) Consideration of censure and related matters by the Senate.

In the event of a conflict between those procedures and this section, this section shall prevail.

#### C15.2 Preliminary Proceedings Concerning the Fitness of a Faculty Member

When reason arises to question the fitness of a faculty member who has tenure or whose non-tenured appointment has not expired, the following preliminary procedure shall be followed:

(a) **DISCUSSION WITH THE FACULTY MEMBER.** The appropriate administrative officers should ordinarily discuss the matter with the faculty member in personal conference. The matter may be resolved by mutual consent at this point.

(b) **COMMITTEE ON PROFESSIONAL CONDUCT.** If the discussion does not result in a satisfactory adjustment in the judgment of the appropriate administrators, they may ask the President to proceed further. If the President desires to proceed further, the President shall send the Chair of the Faculty Senate a written request that the Senate convene the Committee on Professional Conduct.

(c) **COMMITTEE RECOMMENDATIONS.** The Committee should make recommendations to the President in accordance with the procedures and within the time limits specified in Section B4.9 of the Bylaws. If the Committee recommends that termination proceedings should begin, the President may commence the action under the following procedures. If the Committee fails to submit its recommendation within 30 **academic** days, or if the Committee's recommendation is favorable to the faculty member, the President may nonetheless go forward with the following proceedings if the President is convinced that formal termination for cause proceedings should be initiated.

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**Current existing section:**

B4.9 The **COMMITTEE ON PROFESSIONAL CONDUCT** consists of a panel of from five to twelve<sup>1</sup> senior tenured faculty members elected annually by the Faculty Senate. The committee for a particular case shall consist of three senior tenured faculty members selected by the Chair of the Senate from the panel. No member of the Committee shall be a member of the Faculty Senate.<sup>2</sup> Matters involving the professional conduct of faculty members may be brought before this committee by a complainant, (a faculty member, a director of an academic program, an academic dean, the Executive Vice President and Provost, or the President) after all reasonable efforts to reach an informal settlement at the department or school level have failed. In addition, any faculty member accused of unprofessional conduct may request a hearing by the Committee if all attempts at administrative resolution have failed.<sup>3</sup> Those who bring matters of professional conduct to the committee shall provide the committee with a written statement of specific charges. If the committee decides that the charges warrant further inquiry, a copy of the charges shall be forwarded to the faculty member concerned and hearings shall be held. At the hearing the faculty member shall have the right to academic or legal counsel and the right to hear all evidence presented to the committee. If the faculty member chooses legal counsel, the university shall also have the right to be represented by independent counsel.<sup>4</sup> As a result of its deliberations, the committee shall inform the faculty member and the President of the opinion of

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<sup>1</sup> #96004(B)

<sup>2</sup> #95001(B)

<sup>3</sup> #2001-06(B)

<sup>4</sup> #95001(B)

the committee as to whether or not the faculty member's conduct conforms to acceptable professional standards. If the matter cannot be resolved at this point, the committee may recommend to the Faculty Senate a specific sanction of censure. If the committee recommends that procedures for dismissal be initiated, it shall transmit this recommendation to the President for further consideration and action. If the committee recommends sanctions short of dismissal, except for censure, such recommendations will be transmitted to the President who may impose that sanction or a lesser sanction or forward the matter to the Hearing Committee provided for in Section C15 of the Faculty Policies. The period from receipt of a complaint through final recommendation by the committee shall not exceed 30 academic working days, unless an extension of fifteen academic working days is requested of and approved by the President. <sup>5</sup>If the Committee on Professional Conduct, in the course of its deliberations, has reason to believe that a faculty member acting as complainant or witness has knowingly introduced evidence that has been fabricated or has knowingly given false testimony, the Committee may recommend that a charge of unprofessional conduct be brought against the individual. If the Committee has reason to believe that a person who is not a faculty member has done so, the Committee may report its view to an appropriate administrator.

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- (a) **DISCUSSION WITH THE FACULTY MEMBER.** The appropriate administrative officers should ordinarily discuss the matter with the faculty member in personal conference. The matter may be resolved by mutual consent at this point.
- (b) **COMMITTEE ON PROFESSIONAL CONDUCT.** If the discussion does not result in a satisfactory adjustment in the judgment of the appropriate administrators, they may ask the President to proceed further. If the President desires to proceed further, the President shall send the Chair of the Faculty Senate a written request that the Senate convene the Committee on Professional Conduct.
- (c) **COMMITTEE RECOMMENDATIONS.** The Committee should make recommendations to the President in accordance with the procedures and within the time limits specified in Section B4.9 of the Bylaws. If the Committee recommends that termination proceedings should begin, the President may commence the action under the following procedures. If the Committee fails to submit its recommendation within 30 days, or if the Committee's recommendation is favorable to the faculty member, the President may nonetheless go forward with the following proceedings if the President is convinced that formal termination for cause proceedings should be initiated.

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<sup>5</sup> #2001-07(B)