



MEMORANDUM

To: Donna E. Shalala, President

From: Richard L. Williamson
Chair, Faculty Senate

Date: March 5, 2012

Subject: Faculty Senate Legislation #2011-35(B) – Clarification of the Use of the Word “days”
to Either “academic days” or “calendar days” in the *Faculty Manual*

At its February 29, 2012 meeting, the Faculty Senate unanimously approved the proposal to clarify the use of the word “days” in the *Faculty Manual*. While some sections specify either “academic days” or “calendar days”, other sections make reference only to “days” without specification. This has caused confusion or even conflict. The revisions to Sections B4.10(a)(ii), C5.8, C15.8(a), C15.11, C15.12, C15.15 C15.16, and C17.6(c), as well as the Employment of Relatives policy, the Procedures for the Investigation of Alleged Misconduct, and the Patent and Copyright Policy of the Faculty Handbook portion of the *Faculty Manual* clarify references to days so that now it is clear in all cases whether “academic” or “calendar” days are intended.

In addition to the revisions proposed here, references to months and weeks in the *Faculty Manual* may require modification and if so, will be subject to future legislation.

The supporting materials are 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 for Faculty Affairs
Aileen Ugalde, Vice President and General Counsel

CAPSULE: Faculty Senate Legislation #2011-35(B) – Clarification of the Use of the Word
“days” to Either “academic days” or “calendar days” in the *Faculty Manual*

PRESIDENT’S RESPONSE

APPROVED:  DATE: 3/16/12
(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 Revisions to Clarify "Academic" vs. "Calendar" Days

The following sections of the *Faculty Manual* warrant consideration to clarify references to "academic" and "calendar" days. While most sections specify one or the other measure, other sections make reference only to "days" without specification.

Proposed revisions to sections A10.2, A10.7, A10.8 were sent as legislation #2011-25(A).

The following revisions to Sections B4.10(a)(ii), C5.8, C15.8(a), C15.11, C15.12, C15.15, C15.16, and C17.6(c), as well as the Employment of Relatives policy, the Procedures for the Investigation of Alleged Misconduct, and the Patent and Copyright Policy, are also proposed.

In addition to the revisions proposed here, references to months and weeks in the *Faculty Manual* may require modification subject to future legislation.

Proposed Revisions to Section B4.10(a)(ii)

(B4.10 – The COMMITTEE ON RANK, SALARY, AND CONDITIONS OF EMPLOYMENT)

Purpose: As currently written, Section B4.10(a)(ii) of the *Faculty Manual* allows for an appeal by a member of the faculty from an unfavorable decision on promotion or salary to the COMMITTEE ON RANK, SALARY, AND CONDITIONS OF EMPLOYMENT, but the appeal must be made within 120 calendar days of the action or 90 calendar days of when the petitioner could have been reasonably expected to have become aware of the action. The proposed revisions to this section would change the timeline from “calendar” to “academic” days so as to alleviate the necessity for COMMITTEE action during breaks in the academic calendar.

B4.10(a)(ii) proposed revisions:

- ii) the appeal is filed within ~~120 calendar~~ 80 academic days of the action being appealed or within ~~90 calendar~~ 60 academic days of the petitioner’s reasonably being expected to have become aware of it, whichever is later. The time limit can be stayed if the petitioner has been making reasonable efforts to resolve the issues, where the reasonableness of these efforts shall be determined by the Chair of the Faculty Senate or the Chair of the Committee or by appeal of that determination to the General Welfare Committee filed with the Secretary of the Faculty Senate;

Proposed Revisions to Section C5.8– Term Appointments Following Retirement

Purpose: As written, Section C5.8 of the *Faculty Manual* does not specify whether term appointments following retirement are to be measured using academic or calendar days. The following revisions would clarify this provision.

C5.8 proposed revisions:

Faculty members who are reemployed within 30 calendar days of retirement will continue to accrue benefits in the same retirement plan in which they participated prior to retirement. Faculty members who are reemployed within 30 calendar days are not eligible to begin receiving pension benefits.

Faculty members who are reemployed after 30 calendar days will participate in the Retirement Savings Plan.

Proposed Revisions to Section C15 – Termination of Appointment for Cause

Purpose: As written, Section C15 of the *Faculty Manual* makes reference to "academic" days in Sections C15.2 and C15.8, but the other subsections do not specify whether to use academic or calendar days. The following revisions to sections C15.8(a), C15.11, C15.12, C15.15 and C15.16[KDR1] would make Section C15 consistent while at the same time eliminate the need for official action during periods of University recess.

Please note that there are plans for a substantive change to Section C15 to clarify the language and the process.

C15.8(a) proposed revision:

- (a) Within twenty academic working days from the date of the notice of commencement, the faculty member shall send to the President a written response. Upon written request, the President shall grant ten additional academic days [KDR2] and may, for good cause, grant additional time thereafter. The response of the faculty member shall state whether a hearing is desired. If the faculty member desires a hearing, one must be requested in the response and the faculty member must state in the response whether each of the allegations of the Bill of Particulars is admitted or denied. If the faculty member does not in good faith have sufficient information to admit or deny the truth of a particular allegation, the faculty member may so state and the allegation will be deemed to have been denied. Allegations of fact not denied in the response shall be deemed admitted.

C15.11 proposed revisions:

- (a) At any time after notice of the commencement of formal termination for cause proceedings, the parties may send to each other requests for copies of specific documents relevant to the issues that the parties cannot otherwise obtain. Any documents that constitute communications between the parties and their counsel or the University and its counsel shall be absolutely privileged and not subject to discovery under any circumstances. Copies of the documents requested shall be sent to the requesting party within ten academic days [KDR3] following receipt of the request. Documents so produced need not be filed with the Committee. If a party believes a request for documents to be unduly burdensome or irrelevant to the issues, the objecting party shall send to the requesting party an objection within ten academic days after the request. The Committee shall meet and decide by majority vote the issues raised by the objection.
- (b) The parties shall send to each other lists of the names and addresses of all witnesses they expect to call and copies of all documents they intend to offer as evidence within ten academic days after the faculty Hearing Committee is selected.

C15.12 proposed revisions:

| The hearing shall begin no later than ~~thirty~~twenty academic days after the selection of the Hearing Committee. The President shall serve the faculty member and the members of the Hearing Committee with notice of the time and place of the hearing. Once commenced, the hearing shall continue from day to day until completed. In order to assure continuity, the Hearing Committee shall schedule no less than four hours per day for the proceedings. All portions of the hearing shall be closed, unless the parties, in consultation with the Hearing Committee determine otherwise.

C15.15 proposed revisions:

Upon the close of all the evidence, the Committee shall give the parties the opportunity to argue before it. If written briefs would be helpful, the Committee may request them. The Committee may proceed with its deliberations without awaiting a transcription of the hearing where it feels a just decision can be reached by this means; or it may await the availability of a full transcript of the hearing if its decision would be aided thereby. The alternate member shall sit through all the proceedings but shall not participate in the deliberations or any decisions of the Committee unless it is necessary to replace a regular member who has left the Committee. The recommendation shall be based upon the cumulative effect of all the relevant evidence and all the proven grounds for dismissal when considered together and shall be supported by a reasoned opinion stating whether and why the Committee believes the stated grounds for termination have or have not been proven by the greater weight of the evidence. If the recommendation of the Committee is not unanimous, the dissenting members of the Committee shall prepare their own opinion and their own recommendation. The recommendation for sanction must be consistent with the severity of any misconduct found to exist. The sanction of dismissal should be recommended only when the facts proven by the greater weight of the evidence clearly justify such action. Copies of the full report of the Committee, including any minority opinions and recommendations, shall be sent to the parties within ~~twenty~~twenty-five academic days after the close of the evidence. After the conclusion of the hearing, the transcript and all official documents of the hearing shall be maintained in confidence under the custody of the General Counsel and a copy shall be released upon request only to the accused, or as required by Section C15.16. The confidentiality of the transcript and all the official documents shall be protected at all times by all persons with access to the records.

C15.16 proposed revisions:

The President shall transmit to the Board of Trustees the full report of the Hearing Committee including any minority findings and recommendations. Acceptance of the Hearing Committee's recommendations would normally be expected. If the Board of Trustees chooses to review the case, its review should be based on the record of the previous hearing, accompanied by the opportunity for argument, oral, written, or both, by the parties or their counsel at the hearing. The President and the Chair of the Faculty Senate shall be given the opportunity to be present when the Trustees consider the report of the Hearing Committee and they shall have access to all documents submitted to the Trustees in this regard. The recommendation of the Hearing Committee should either be sustained or the proceedings be returned to the Committee by sending to its chair specific questions and when necessary, directions to receive additional evidence on specified issues. If the Board of Trustees returns the proceeding to the Committee with questions, the Chair of the Committee, within ten academic [KDR4]days after receipt of the questions, shall send copies of the questions to the parties. If the Board of Trustees directs that additional evidence be received on specified issues, the Chair of the Committee shall at the same time advise the parties of the issues and direct them to produce for consideration by the Committee any additional evidence they may have relevant to the specified issues. Within ten academic days after sending copies of the questions to the parties, the Hearing Committee shall meet and hear argument from the parties and receive any additional evidence that may be offered on issues specified by the Board. The Committee proceedings shall continue from day to day until they are completed. Upon the receipt of any additional evidence and argument offered by the parties, the Committee should reconsider, taking into account the stated questions and any new evidence received. Within ~~twenty-five~~ fifteen academic days after the conclusion of the additional hearing, the Committee should frame its recommendation and send it directly to the Board of Trustees. Only after carefully studying any recommendation that may be sent by the Committee in accordance with this paragraph should the Board of Trustees make a final decision contrary to the recommendation of the Committee.

Proposed Revision to Section C17.6(c)
(C17 – Faculty Benefits)

Purpose: The *Faculty Manual* Section 17.6(c) does not distinguish between academic and calendar days. The following revision would clarify the policy.

Section 17.6(c) proposed revisions:

In addition to the benefits to which they are already entitled such as library privilege and rights to purchase faculty parking permits, they shall be eligible for the following: retirement, life insurance, disability, health insurance and tuition remission.

Part-time faculty members are entitled to receive a prorated tuition remission benefit after 90 calendar days of continuous employment determined by the full-time equivalent (FTE) of the employees' position. Thus a person who is working 70% time would receive 70% of the tuition remission benefit the person would have received if working full-time.

Health insurance benefits are also pro-rated. For any particular health insurance plan and coverage level (i.e. employee only, employee plus spouse, etc.) there is a set level of employee contribution (premium) and employer (University) contribution. For a person working 70% the University would contribute 70% of what it would contribute for a full-time employee choosing the same plan. The 70% employee would then be liable for the employee contribution plus 30% of the University contribution.

Proposed Revisions to Employment of Relatives (Nepotism) Policy

Purpose: The Faculty Handbook provisions on Employment of Relatives do not distinguish between academic and calendar days. The following revisions would clarify the policy.

Section III proposed revisions:

In cases where a Supervisor or head of a Unit marries or becomes a Domestic Partner or Relative of another individual in the same Unit, those employees will be given the option of electing who will seek another position within or outside the University. The individual who is the Supervisor or head of the Unit must notify his or her supervisor in writing prior to the change in circumstances if possible and in any event within thirty (30) calendar days after the change in circumstances. If no election is made within thirty (30) calendar days of notification of the change in circumstances, the individual with less seniority within that Unit must find employment in another Unit within the University or must find employment outside of the University. In such cases, a transitional period of up to one year will be granted.

Section VI proposed revisions:

This policy is effective December 31, 2004. In Units where a supervisory relationship between Relatives or Domestic Partners existed prior to the effective date of this policy, the individuals will be "grandfathered" but encouraged to sever the supervisory relationship in accordance with this policy. The person who is the supervisor or head of a Unit where a Relative or Domestic Partner is employed must notify his or her supervisor in writing within ninety (90) calendar days of the effective date of this policy. Failure to disclose the relationship may lead to disciplinary action in accordance with the applicable provisions of the Faculty Manual or University personnel policies, as appropriate.

Proposed Revisions to Procedures for the Investigation of Alleged Misconduct in Research

Purpose: The Faculty Handbook provisions on the Procedures for the Investigation of Alleged Misconduct in Research make reference to "academic" days for most references, but do not distinguish between "academic" and "calendar" days in other references. The following revisions would clarify the policy and make it consistent throughout. These provisions can be found at approximately pages 118-122 of the *Faculty Manual*.

Investigation of Alleged Misconduct proposed revisions:

Steps in an investigation:

1. **Allegation** – Allegation means a disclosure of possible research misconduct through any means of communication. The disclosure may be by written or oral statement or other communication to an institutional official. Allegations of misconduct should normally be directed to the Vice Provost for Research or designee, who shall determine if an inquiry is warranted. Others who receive an allegation of misconduct should immediately forward it to the Vice Provost for Research.
2. An inquiry is warranted if the Vice Provost for Research determines that the allegation (1) falls within the definition of research misconduct and (2) is sufficiently credible and specific so that potential evidence of possible research misconduct may be identified.
3. **Inquiry** - An inquiry is an information gathering and initial fact finding process to determine if a formal investigation of misconduct should be undertaken. An inquiry will be conducted by an Inquiry Panel, made up of three tenured faculty members chosen by the Vice Provost for Research from the pool. Members who serve on the Inquiry Panel may not serve on the Investigation Committee for the same matter. The Assistant Provost for Research Standards shall be a non-voting ex-officio member of the Inquiry Panel. At the time of or before beginning an inquiry, the Vice Provost for Research must make a good faith effort to notify in writing the presumed respondent. If the Inquiry Panel subsequently identifies additional respondents, the Inquiry Panel will notify the Vice Provost for Research who in turn will notify them in writing.

To the extent it has not already done so at the allegation stage, the University must, on or before the date on which the respondent is notified or inquiry begins, whichever is earlier, promptly take all reasonable and practical steps to (1) obtain custody of all the research records and evidence needed to conduct the research misconduct proceeding, (2) inventory the records and evidence, and (3) sequester them in a secure manner, except that, where the research records or evidence encompass scientific instruments shared by a number of users, custody may be limited to copies of the data or evidence on such instruments, so long as those copies are substantially equivalent in evidentiary value to the original data or evidence on the instruments. The University shall, where appropriate, give the respondent copies of, or reasonable, supervised access to, the research record. The University shall undertake all

reasonable and practical efforts to take custody of additional research records or evidence that is discovered during the course of a research misconduct proceeding.

An inquiry must be completed within 60 calendar days of its initiation unless circumstances clearly warrant a longer period. A draft written report shall be prepared that states what evidence was reviewed, summarizes relevant interviews, and includes the conclusions of the Inquiry Panel as to whether an investigation is warranted. An investigation is warranted if there is (1) a reasonable basis for concluding that the allegation falls within the definition of research misconduct and (2) preliminary information-gathering and preliminary fact-finding from the inquiry indicates that the allegation may have substance.

The individual(s) against whom the allegations were made shall be given a copy of the draft report. If they wish to comment on that report, their comments must be submitted in writing to the Inquiry Panel within 14 calendar days of the date on which the individual(s) received the draft report and will be made part of the record. If the inquiry takes longer than 60 calendar days to complete, the record of the inquiry shall include documentation of the reasons for exceeding the 60-day period.

The final report of the Inquiry Panel, including any comments received from the individual(s) against whom the allegations were made, shall be sent to the Vice Provost for Research. The reasons for the decision whether an investigation is warranted should be documented in that report.

The Vice Provost for Research shall maintain sufficiently detailed documentation of inquiries to permit a later assessment of the reason for that decision. Such records shall be maintained in a secure manner for a period of at least seven years after the termination of the inquiry, and shall, upon request, be provided to authorized federal agency personnel as may be required by law.

Within 30 calendar days of finding that an investigation regarding research involving federal agency support is warranted the University shall provide ORI with the written findings and a copy of the report of the Inquiry Panel which shall include the following information: (1) The name and position of the respondent; (2) A description of the allegations of research misconduct; (3) The federal agency support, including for example, grant numbers, grant applications, contracts, and publications listing federal agency support; (4) The basis for recommending that the alleged actions warrant an investigation; and (5) Any comments on the report by the respondent. The University shall provide the following information to ORI upon request: (1) The institutional policies and procedures under which the inquiry was conducted; (2) The research records and evidence reviewed, transcripts or recordings of any interviews, and copies of all relevant documents; and (3) The charges for the investigation to consider.

4. **Formal investigation of misconduct** - If findings from the inquiry provide a sufficient basis for conducting an investigation by the Committee, the Vice Provost for Research will initiate an investigation within 30 calendar days following receipt of the Inquiry Panel report. An investigation means the formal development of a factual record and the

examination of that record leading to a decision either to make a finding that research misconduct was not shown or to recommend a finding of research misconduct; the latter finding may include a recommendation for appropriate actions, including administrative actions. The Vice Provost for Research will inform the respondent and any collaborators promptly, in writing, of the allegations, of the decision to initiate a formal investigation, and of the procedures that will be followed. The Committee shall give the respondent and the Vice Provost for Research written notice of any new allegations of research misconduct within a reasonable amount of time after deciding to pursue any such allegations not addressed during the inquiry or included in the initial notice of investigation.

The Committee is empowered to call for and examine all relevant documentation, including, but not limited to, research data and proposals, laboratory notebooks, grant applications, publications, correspondence, memoranda of telephone calls and computer data, files and programs. These materials may relate to any research with which the accused is involved. To the extent the University has not already done so at the allegation or inquiry stages, the Committee shall take all reasonable and practical steps to (1) obtain custody of all the research records and evidence needed to conduct the research misconduct proceeding, (2) inventory the records and evidence, and (3) sequester them in a secure manner, except that, where the research records or evidence encompass scientific instruments shared by a number of users, custody may be limited to copies of the data or evidence on such instruments, so long as those copies are substantially equivalent in evidentiary value to the data or evidence on the instruments. Whenever possible, the University shall take custody of the records (1) before or at the time the Vice Provost for Research notifies the respondent; and (2) promptly thereafter, whenever additional items become known or relevant to the investigation. The University shall, where appropriate, give the respondent copies of or reasonable, supervised access to, the research record.

A first round of hearings will be conducted in which those who have brought the charges, those alleged to have committed research misconduct, and any others who might have knowledge relevant to the alleged misconduct will be interviewed individually in closed-door sessions. A transcription or recording of these interviews shall be prepared and given to each interviewed party for comment or revision, and included as part of the investigatory file. Comments by any interviewed party or the accused must be made within 30 calendar days of receipt of the transcription or recording. The Committee shall consider and address any comments of the interviewed parties and the respondent before issuing a final report. The Committee shall use diligent efforts to ensure that the investigation is thorough and sufficiently documented and includes examination of all research, records and evidence relevant to reaching a decision on the merits of the allegations. The Committee shall pursue diligently all significant issues and leads discovered that are determined relevant to the investigation, including any evidence of additional instances of possible research misconduct, and continue the investigation to completion

At the conclusion of these hearings, the Committee will review the evidence and apprise all those who may bear some responsibility for the alleged misconduct of the results of

the investigation to that point. These individuals will then be granted the right of rebuttal and the opportunity to present additional evidence to the Committee. Following this, the Committee may recall earlier witnesses for re-examination, call new witnesses, or close the investigative phase. In any case, before the Committee moves toward final deliberations, those bearing potential responsibility will always be given an opportunity to review and comment upon any new evidence uncovered subsequent to their last appearance before the Committee

The Committee must complete within 120 calendar days all aspects of investigation, including conducting the investigation, preparing the report of findings, providing the draft report for comment and sending the final report to the appropriate University officials in order that the final report can be submitted to ORI where required. If unable to complete the investigation in 120 calendar days, the Committee must provide the reasons for the delay to the Vice Provost for Research who must ask ORI for an extension in writing, where required.

Committee Report and Recommendations

The Committee will evaluate all evidence and testimony in order to determine if the allegations of misconduct are substantiated and, if so, who must bear responsibility. Because of the negative impact of charges of misconduct, whether ultimately substantiated or not, on the research career of an individual, it is important that the Committee's final decision be rendered in clear terms. The destruction, absence of, or respondent's failure to provide research records adequately documenting the questioned research is evidence of research misconduct where the University establishes by a preponderance of the evidence that the respondent had research records and intentionally, knowingly, or recklessly failed to produce them in a timely manner and that the respondent's conduct constitutes a significant departure from accepted practices of the relevant research community. In determining whether the University has carried the burden of proof imposed by this part, the Committee shall give due consideration to admissible, credible evidence of honest error or difference of opinion presented by the respondent. The respondent has the burden of going forward with and proving by a preponderance of the evidence any and all affirmative defenses raised and any mitigating factors that are relevant to a decision to impose administrative actions following a research misconduct proceeding.

A finding of research misconduct requires a determination by the Committee by an eighty percent (80%) majority vote that 1) there was a significant departure from accepted practices of the relevant research community; 2) the misconduct was committed intentionally, knowingly, or recklessly; and 3) the allegation was proven by a preponderance of the evidence. Preponderance of the evidence means proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not. If the Committee cannot reach this conclusion, then it will report that the individual(s) under investigation have been exonerated. A minority report by a Committee member may be written which will be included with the final report. The Committee may make other relevant recommendations for action to be taken by the University, including, but not limited to, referring the matter to the Committee on Professional Conduct.

At the close of its investigation, the Committee will prepare a draft written report, and make that draft report available for comment by the respondent(s). The comments of the respondent(s), if any, must be submitted in writing to the Committee within calendar 30 days of the date on which the respondent(s) received the draft report. If they can be identified, the complainant(s) should be provided with those portions of the report that address their role and opinions in the investigation. The comments of the complainant, if any, must be submitted in writing to the Committee within 30 calendar days of the date on which the complainant received the draft investigation report or relevant portions of it. The Committee will submit the final report including any comments received from the respondent(s) or the complainant to the Provost, Dean of the School or College at which the respondent has an appointment, and the Vice Provost for Research.

Proposed Revisions to Patent and Copyright Policy

Purpose: The Patent and Copyright Policy does not currently distinguish between academic and calendar days. The following revisions to Section III, Paragraphs 3.3(e) and 3.3(f), and Section VI would clarify the policy.

Section III, Paragraph 3.3(e) proposed revisions:

(e) To determine, in the case of a discovery or invention in which the University has a property interest, whether the University should attempt to obtain a patent or should submit the discovery or invention to the University's patent agent, any such determination to be made within two months from the date the discovery or invention has been disclosed to the Committee or, if sooner, within thirty (30) calendar days after a written request that such determination be made is received from the President of the University or from the inventor or inventors.

Section III, Paragraph 3.3(f) proposed revisions:

(f) If the Committee decides to submit a discovery or invention of the University to the University's patent agent, and if the patent agent shall decide either not to file an application for a patent or to abandon an application that has been filed, then the Committee shall determine whether the University shall file such application or proceed with an application already filed, or shall assign any right that the University may have in the discovery or invention to the inventor or inventors, such determination to be made within thirty (30) calendar days after the receipt by the Committee of notice from the University's patent agent of a determination not to file such application or to abandon an application already filed.

Section VI proposed revisions:

If any interested person is dissatisfied with the determination or disposition by the Committee of any matter relating to any discovery, invention, patent, copyright, or copyrightable material, or the publication of any writing discussing or disclosing any of the foregoing, such person may request that the determination be reviewed by the President of the University. Any such request shall be in writing and shall be delivered to the Committee not later than fifteen (15) calendar days after such person has received notice of the determination or disposition which the person regards as unsatisfactory, or if sooner, within fifteen (15) calendar days after the expiration date of the period of time within which the Committee should have reported its findings and determinations to interested parties. The Committee, on receipt of such request, unless it reconsiders its original determination and modifies the same in a manner that is satisfactory to all interested parties, shall forward promptly such request, together with its determination and recommendations, to the President. The President may affirm, modify or reverse the Committee's determination, on the basis of such information as the President wishes to consider, and the President's decision shall be binding on all interested parties. The Committee shall assist the President in reviewing any such matter in whatever manner the President may request.