


Date: April 6, 2016

TO: Donald Crowley, Faculty Secretary
Randall Teal, Faculty Senate Chair 2015-16

CC: John Wiencek, Provost and Executive Vice President
Anna Thompson, Assistant to Faculty Secretary

FROM: Chuck Staben, President 

SUBJECT: General Faculty Meeting February 9, 2016

In response to your memo of February 11, 2016, and pursuant to Faculty-Staff Handbook (FSH) section 1420, I hereby address the items listed below (attached to your memo of February 11, 2016) as follows:

APPROVED WITHOUT COMMENT:

Faculty-Staff Handbook:

- **FS-16-008:** FSH 3720 – Sabbatical Leave
- **FS-16-009:** FSH 1640.74-Sabbatical Leave Committee/1640.90-General Education Assessment Committee
- **FS-16-013:** FSH 5300 – Copyrights, Protectable Discoveries and Other Intellectual Property Rights
- **FS-16-016:** FSH 3320 – Faculty Evaluation

Catalog Changes:

- **FS-16-014a** (UCC-16-019): CNR - Conservation Social Sciences to Natural Resource Cons. (name change)
- **FS-16-014b** (UCC-16-019): CNR - Discontinue Certificate Fire, Ecology, Management
- **FS-16-015** (UCC-16-018): CLASS - Martin School Reorganization
- **FS-16-019** (UCC-16-022a): CLASS - General Studies (distance)
- **FS-16-021** (UCC-16-022c): CLASS - History (distance)
- **FS-16-022** (UCC-16-022d): CLASS - Organizational Sciences (distance)
- **FS-16-023** (UCC-16-022e): CLASS - Psychology (distance)
- **FS-16-029** (UCC-16-002): Prior Learning Assessment
- **FS-16-030** (UCC-16-026a): CNR - Fire Ecology, Management, and Technology
- **FS-16-031** (UCC-16-026b): CNR - Remote Sensing
- **FS-16-032** (UCC-16-026c): CNR - Forest Resources to Forestry

DISAPPROVED WITH COMMENT:

Faculty-Staff Handbook:

- **FS-16-017:** FSH 3710 – Leave Policy (update) – See analysis below.

The Faculty are to be lauded for their attempt to ensure the University recognizes the decision of the US Supreme Court in Obergefell v Hodges recognizing the right of gay couples to marry. However, the proposed revisions to FSH 3710 (pictured below) are both unnecessary and overbroad.

The Obergefell case held that states cannot deny the status of marriage to same sex couples. The Obergefell case does **not** require states to recognize domestic relationships other than marriage. The impact of Obergefell on Idaho’s constitution Art. III, § 28 (Marriage) only eliminates the reference to marriage being “between a man and a woman” which is illustrated in the strike-out below.

Const. Art. III, § 28

§ 28. Marriage

A marriage ~~between a man and a woman~~ is the only domestic legal union that shall be valid or recognized in this state.

Thus, in Idaho, the requirement that a marriage be the only recognized domestic legal union remains; with marriage now encompassing both same-sex and opposite-sex couples. The University already recognizes married same-sex couples as spouses. FSH3710 as currently written recognizes the relationship of “spouse” which now, by law, encompasses married same sex couples as well. Thus no language change is necessary to carry out the Obergefell decision. The proposed change is overbroad because it attempts to include an individual who has assumed the relationship of a spouse without the requirement of a marriage; often known as a domestic partner. This, however would include couples who, although eligible to marry simply choose not to, as well as couples who choose to cohabitate even though not eligible to marry because of blood relationship or current marriage to another. Legal recognition of this sort of a domestic relationship outside of marriage remains barred under the Idaho Constitution even after the Supreme Court’s decision in Obergefell. Lastly, the proposed amendment eliminates children of an employee’s spouse from a prior marriage unless the employee has adopted them. I suspect this was unintentional.

Proposed revisions to FSH3710 Section A-3 definition of immediate family member:

A-3. Unless otherwise noted, for purposes of this policy, “immediate family member” includes: ~~your spouse, your child (biological, adoption or foster arrangement), parent, brother, sister, grandparent, and these same relationships of a spouse by marriage, adoption or foster arrangement.~~ An immediate family member may also include an individual who has assumed a similar relationship to those above, ~~other than the relationship of spouse*~~ and for whom the employee or the individual has had financial responsibility for the other. An immediate family member also may include any individual who is a qualified dependent under IRS regulations. The university reserves the right to request documentation establishing financial responsibility or qualifying status as an IRS dependent.

*Due to the 2006 “marriage amendment” to the Idaho Constitution the university, despite the wishes of the Faculty Senate, is unable to include domestic partnerships. *[ed. 1/10]*