TO: The Academic Senate
FROM: Faculty Affairs Committee
SUBJECT: Policy on Religious Observance
PURPOSE: Approval of the Senate
ACTION REQUESTED: That the Academic Senate approve the proposed policy on Religious Observance

BACKGROUND INFORMATION: On April 18, 2001, the Chair of the Academic Senate asked FAC to consider the issue of how to deal with faculty and students who miss classes because of religious holidays. A case had been reported to the Senate in which a student who had taken off on Yom Kippur, a day on which Jews are required not to work and not to attend school, was penalized by a faculty member who was enforcing a required attendance policy. The Senate requested that FAC investigate policies on other campuses and make a recommendation.

FAC members discussed this issue at our meetings of October 3, October 17, November 7, January 16, and February 6. In our preliminary discussions of this matter, FAC members stressed the importance of sensitivity to the diverse religious practices of our campus population and noted concerns that our 2001-02 academic calendar opened with classes on Yom Kippur. We learned from consultations with associate deans that although they too are concerned about sensitivity to students’ religious practices, there were no school policies in place and no other known complaints. Committee members consulted and discussed policies on observance of religious holidays from the approximately ten CSUs that have such policies as well as the relevance of California Education Code Section 89320, which reads as follows:

“The Trustees of the California State University shall require each state university, in administering any test or examination, to permit any student who is eligible to undergo the test or examination to do so, without penalty, at a time when that activity would not violate the student’s religious creed. This requirement shall not apply in the event that administering the test or examination at an alternate time would impose an undue hardship which could not reasonably have been avoided. In any court proceeding in which the existence of an undue hardship which could not reasonably have been avoided is an issue, the burden of proof shall be upon the institution.”
Throughout our discussions our committee benefited from the legal expertise of Gary McBride, who assisted our interpretation of the code. McBride noted that the California Legislature wants students to be permitted to delay tests in order to practice their religion, and that the law sets a high bar for faculty who deny relief. The standard of proof is undue hardship, and the burden of proof is expressly on the University, not on the student. Faculty must have a really good excuse (undue hardship) for denying relief, and should document that undue hardship.

FAC members find our proposed language acceptable for three reasons. First, it adequately conveys the mandatory nature of the statute and implies that no excuse for denying relief (on tests) is acceptable, and thus it errs on the side of caution. Second, since we found no guidance from the Chancellor’s office on exactly what is meant by undue hardship, we cannot give a reliable example of undue hardship; thus, silence is prudent. The language will ultimately be defined in a judicial decision involving faculty from some other school. Failure by the student to give advanced warning that a test will be missed may not, by itself, create an undue hardship. Finally, the uncertainty created by the statute should not preclude us from establishing, as University policy, a student obligation to warn faculty that a test will be missed.

FAC voted (7-0) to recommend this Policy on Religious Observance to the Academic Senate.

**Policy on Religious Observance**

The faculty of California State University Hayward, welcoming the religious and spiritual diversity of our student body, recognizes that upon occasion students’ religious observances may conflict with course requirements. California Education Code Section 89320 requires faculty to reschedule a test or examination, without penalty to the student, when the regularly scheduled test or examination conflicts with the student’s religious observances. Students with *scheduling conflicts related to religious observance* should bring these to the attention of the instructor in a timely manner, so that the student will be accommodated, if at all possible.

* For clarity, ExComm is suggesting the addition of the word “other” to read “…Students with other scheduling conflicts related to religious observance…”