

## **Faculty Senate Minutes #307**

**Thursday, March 8, 2007**

**3:20 PM**

**Room 630 T**

**Present (23):** Marvie Brooks, Orlanda Brugnola, Dara Byrne, Troy Coleman, Edward Davenport, Robert DeLucia, Virginia Diaz, Kirk Dombrowski, Janice Dunham, Marcia Esparza, DeeDee Falkenbach, Konstantinos Georgatos, P. J. Gibson, Karen Kaplowitz, Jane Katz, Richard Kempter, Tom Litwack, John Matteson, Nicholas Petraco, Peter Romaniuk, Francis Sheehan, Liliana Soto-Fernandez, Thalia Vrachopoulos

**Absent (14):** Teresa Booker, Bettina Carbonell, Roddrick Colvin, Jennifer Dysart, Amy Green, Yi He, James Malone, Evan Mandery, Brian Onieal, Dagoberto Orrantia, Edward Paulino, Valli Rajah, Agnes Wieschenberg, Robin Whitney

**Guests:** Professors Ned Benton, Ric Curtis, Maki Haberfeld

**Invited Guests:** Professors Avram Bornstein, James Cohen

### **Agenda**

- 1. Announcements**
- 2. Approval of Minutes #306 of the February 21, 2007, meeting**
- 3. Election of 4 faculty members to serve on the Graduate Advisory Committee**
- 4. Ratification of the election of the 4 adjunct at-large members of the Senate**
- 5. Discussion of Counsel Maldonado's Memorandum on Department Reorganization**
- 6. Charter Revision discussion**

**1. Announcements.** Noted.

**2. Adoption of Minutes #306 of the February 21, 2007, meeting.** Approved.

### **3. Election of 4 faculty to serve on the Graduate Advisory Committee**

By secret, written ballot, the Senate elected Professors DeeDee Falkenbach (Psychology); David Kennedy (Anthropology); Barry Latzer (Government); and Richard Stripp (Sciences).

### **4. Ratification of the election of the 4 adjunct at-large members of the 2007-8 Senate**

The Senate, on recommendation of the Executive Committee, ratified the uncontested election of the four adjunct faculty who were candidates for the 4 at-large adjunct positions on the 2007-8 Senate. The four adjuncts are Heather Holtman (Counseling); Tim Horohoe (LPS); Richard Kempter (Psychology); and Robin Whitney (English).

### **5. Discussion of Counsel Maldonado's Memorandum on Department Reorganization: Invited guests: Professor Jim Cohen, Chair, John Jay Chapter of the PSC, and Professor Avram Bornstein, John Jay PSC Grievance Officer [Attachment A, B, C]**

Vice President Francis Sheehan moved that the Faculty Senate create an Ad Hoc Senate Committee, to be chaired by Senator Evan Mandery, to study Counsel Maldonado's memorandum [Attachment A] on department reorganization, as well as the documents she references in her memorandum, and other pertinent documents, including CUNY's April 25, 1995, "Informational Guidelines for the Reorganization or Closure of Academic Programs and Departments" [Attachment B] and the February 9, 1971 "Minutes of the Executive Committee of the Board of Higher Education of the City of New York" [Attachment C] and to report to the Senate by the first Senate meeting in April. The motion was seconded by Senator Kirk Dombrowski and was adopted by unanimous vote.

Senator Kirk Dombrowski then moved the following resolution, which was seconded by Senator Tom Litwack:

Whereas, any departmental reorganization affects all departments in the College and not only those considered for reorganization, and

Whereas, the intentions of the College Administration regarding possible future departmental reorganizations have been introduced to faculty in an ad hoc fashion, with no clear statement of the overall purpose or goal of such reorganizations, therefore

The Faculty Senate of John Jay College resolves that before any proposal or action by the President of the College or by the Provost pursuant to actual or planned departmental reorganizations, the President or the Provost provide to the Faculty

Senate and to the Council of Chairs a written rationale for any suggested or proposed reorganizations and engage in full and meaningful consultation with the Faculty Senate and the Council of Chairs, and further

The Faculty Senate resolves that an evaluation of financial, governance, and personnel impacts of any proposed departmental reorganization(s) on any academic departments targeted for reorganization as well as on the other, non-targeted, academic departments be presented by the Administration to the Faculty Senate and Council of Chairs for their review and consideration.

The motion was adopted by unanimous vote.

#### **8. Charter Revision discussion**

In the interim since the previous Senate meeting, as agreed, proposals for additional Charter revisions and for changes in Version 09 of the Senate/Chairs Charter Revision Proposals had been issued by various Senators; these were reviewed and debated by the Senate.

The meeting was adjourned at 5:10 PM

Submitted by

Edward Davenport & Virginia Diaz  
Co-Recording Secretaries



JOHN JAY COLLEGE  
THE CITY UNIVERSITY OF NEW YORK  
OF CRIMINAL JUSTICE

COUNSEL TO THE PRESIDENT

ROSEMARIE MALDONADO

**Memorandum**

To: John Jay College Faculty  
From: Rosemarie Maldonado *R. Maldonado*  
Re: Reorganization of Academic Departments  
Date: February 27, 2007

Last semester, members of the College community asked me to do legal research on the procedures for reorganizing academic departments. That this issue was raised in a number of settings highlighted the need for guidance not only on procedures but also on the impact departmental reorganizations could have on faculty seniority and tenure. Included below are the processes established by the State Education Law, CUNY Bylaws, policies and procedures and the College Charter. In preparing this memorandum, I have also sought input from CUNY's Office of Academic Affairs, Office of Faculty and Staff Relations and Office of Legal Affairs. Please feel free to contact me if you have any further questions.

**1. What is the process for creating, closing, consolidating or merging<sup>1</sup> academic departments?**

Section 6206(7) of the Education Law vests the Board of Trustees with the authority to create, merge, close and consolidate academic departments within CUNY. At the college level, a proposed action for Board consideration can be initiated by either faculty or the president. Whatever the source, Board Bylaws and guidelines contemplate that such proposals be developed in consultation with faculty and students and require that they be vetted through college governance structures (CUNY Informational Guidelines for the Reorganization or Closure of Academic Programs and Departments, April 25, 1995 ("1995 Guidelines")). At a minimum, that would require conferring with the Faculty Senate and Student Council, and submitting the proposal to the College Council for review and a vote.

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<sup>1</sup> The 1995 Guidelines for the Reorganization or Closure of Academic Programs and Departments defined the following terms: (1) "closing down" a department means abolishing it; (2) "consolidating" two or more departments means abolishing each and combining them to form a totally new department; and (3) "merging" academic departments means abolishing one or more departments and transferring staff into another existing department.

After the appropriate faculty and student consultation process set forth above, the college president makes an independent assessment of the proposed reorganization and submits his/her own recommendation to the Chancellor. A college president has the discretion to forward, or decline to forward, to the Chancellor the recommendation of a college governance body (CUNY Bylaws Article XI, Section 11.4 (a) and (j); 1995 Guidelines). This is consistent with the Board's Statement of Policy on the Organization and Governance of the City University of New York, as adopted on February 9, 1971, and the 1995 Guidelines, which state as follows:

It is the policy of the Board that through the adoption of governance plans: (1) the *primary* responsibility for academic programs and their academic organization would rest with the faculty; (2) the *ultimate* college responsibility for academic programs and their academic organization would rest with the college president; and (3) students and faculty would be consulted in the academic planning process.

Upon review, the Vice Chancellor for Academic Affairs forwards a recommendation to the Board of Trustees Committee on Academic Policy, Program and Research ("CAPRA"). The college must also inform the Vice Chancellor for Faculty and Staff Relations of the proposed action's impact on personnel. Recommendations approved by the Chancellery and CAPRA are placed on the Board of Trustees policy calendar. All required personnel actions must also be approved by the Board of Trustees. If the action results in the closure of a program or a curricular modification, CUNY must obtain approval from the State Education Department.

Article II, Section 1 of John Jay's Charter delineates procedures to be followed when a department petitions for the following actions: (1) the creation of a department with less than seven faculty members; (2) the merger of two disciplines into one department; and, (3) the separation of disciplines from a combined department. This Charter section provides as follows:

Any discipline . . . which has less than the required number of faculty members may petition the College Council to establish a separate department and may do so upon a two-thirds affirmative vote of Council members present and voting at a regular Council meeting. If one or more disciplines choose to be combined into a single department, such combination may be effected by a two-thirds affirmative vote of the total membership of the disciplines affected and the approval of the College Council. If at any time subsequent to such a merger a discipline wishes to be separated from the combined department, a two-thirds affirmative vote of the total membership of the discipline can effect such a separation and the discipline can become a separate department provided it meets the minimum requirement of seven full time faculty members and has the approval of the College Council.

Although this Charter section sets forth a mechanism for departments to initiate consideration of a reorganization, this is not the exclusive mechanism by which such proposals can be advanced to the College Council and ultimately the Board of Trustees.

For example, such proposals can be advanced by an academic department, the college president, the Faculty Senate and the Council of Chairs.

**2. In the event of a departmental reorganization, how would the transfer of existing faculty be determined?**

At the college level, it is the president who is authorized to make recommendations to the Chancellor concerning faculty personnel actions. CUNY Bylaws and policies require that the president seek faculty consultation and input prior to making such recommendations (CUNY Bylaws Article XI, Section 11.4). This would include extensive consultation with individual faculty members as well as affected departments. Department personnel committees, however, are not required to vote on such transfers. Ultimately, the power to transfer and reassign faculty rests with CUNY's Board of Trustees (Section 6212(7) of the New York State Education Law; Bylaws Section 6.8(b)).

**3. Is faculty tenure impacted by a transfer to a different academic department?**

Neither tenure, nor the period required for the achievement of tenure, is affected by a transfer to another educational unit within CUNY (Section 6212(7) of the New York State Education Law and CUNY Bylaws Article VI, Section 6.2(e), 6.8(a) and (b)). Therefore, tenured faculty members who transfer to a newly created department, a merged department, a consolidated department or an existing department carry tenure with them. Under these circumstances the department to which a faculty member transfers does not have the authority to unilaterally reconsider a tenure decision already made by the Board of Trustees.

**4. Is faculty tenure impacted by the closure of an academic department?**

In the event of a departmental closure that is not the result of financial exigency, the college is obligated to attempt to find a vacant position within the college which can be "capably" filled by an affected tenured faculty member. There is, however, no obligation to find a vacant position in another college (CUNY Bylaws Article VI, Section 6.9 and 6.10). Under Article 31.5 of the PSC-CUNY Agreement, the University's Instructional Staff Referral Service is available to PSC members whose positions have been discontinued.

**5. Is a tenured faculty member's seniority impacted by a transfer to a different academic department?**

Yes. For tenured faculty, seniority equals their date of appointment to the department. (CUNY Bylaws Article VI, Section 6.9(b), 6.10(b)). Therefore, all tenured faculty members who transfer to a newly created department, or a consolidated department, have the same seniority date (that is, the date of appointment to the new department). Likewise, tenured faculty members who transfer to an existing department will have less seniority than the tenured faculty already working there, regardless of their original dates of appointment (1995 Guidelines). Board resolutions authorizing such transfers typically

explain that the college president will break “ties in seniority” by using the faculty members’ first date of appointment to an instructional staff title at the college. This system restores the relative seniority between the transferees.

**6. Is the seniority of a faculty member who is not yet tenured, but who is on a tenure-track line, impacted by a transfer to a different academic department?**

No. The seniority of non-tenured faculty on tenure-track lines is calculated on the basis of continuous service in a full-time instructional staff title. Therefore, the seniority of non-tenured, tenure-track faculty does not change as a result of a transfer to a new or existing department. This conclusion is based, in part, on CUNY Bylaws Article VI, Section 6.8(a), which states that “the period required for the achievement of tenure” is not affected by a transfer within CUNY (1995 Guidelines; CUNY Guidelines for Retrenchment Mandated by Financial Exigency, April 27, 1992).

**7. When is faculty seniority relevant?**

Seniority is relevant when it comes to retrenchment. Retrenchment can occur because of financial exigency or for other reasons. In either case, the basic unit of retrenchment is the academic department. Within that unit, non-tenured faculty must be discontinued prior to tenured faculty. Priority for retention of faculty within each category (tenured and non-tenured) is based on seniority. Although “special educational reasons” might justify deviating from the strict application of seniority, it is never permitted as a rationale for retaining an untenured faculty member in preference to a tenured faculty member (CUNY Bylaws Article VI, Section 6.9 and 12; CUNY Guidelines for Retrenchment Mandated by Financial Exigency, dated April 27, 1992).

**DRAFT**

**THE CITY UNIVERSITY OF NEW YORK**

*Offices of the  
Vice Chancellor for Academic Affairs  
Vice Chancellor for Faculty and Staff Relations  
Vice Chancellor for Legal Affairs*

**INFORMATIONAL GUIDELINES FOR THE REORGANIZATION OR CLOSURE OF  
ACADEMIC PROGRAMS AND DEPARTMENTS**

**April 25, 1995**



## INFORMATIONAL GUIDELINES FOR THE REORGANIZATION OR CLOSURE OF ACADEMIC PROGRAMS AND DEPARTMENTS

### 1. PREAMBLE

This document has been compiled at the request of the Council of Presidents to assist colleges which may face having to reorganize their academic programs and departments in response to financial exigency arising from budget cuts, or for institutional reasons. It provides consolidated information on the procedural, policy and legal requirements which a college needs to take into account if it wishes to 1) close down or suspend an academic degree or certificate program; 2) close down a bylaw academic department; 3) consolidate or merge a bylaw academic department with another department; or 4) transfer an academic degree or certificate program to another college.

The document has been prepared for informational purposes only and is based on extant City University bylaws, policies and guidelines, statutory requirements, legal and procedural precedent and common sense. It does not establish any new policies or procedures. It is intended solely to ensure that the University community realizes what is required of college presidents under the policies of the Board of Trustees ("Board") and the provisions of the State Education Law.

Decisions to reorganize academic programs are within the Board's prerogatives. These decisions impact on instructional staff and must be undertaken according to established procedures. They can also affect students, and provision must be made to ensure that the University's legal and moral obligations to its students are fulfilled. Finally, closures, consolidations, mergers and transfers of academic programs and departments can alter the academic profile of both the colleges and the University as a whole, and thus affect the University's ability to achieve its educational mission with respect to the quality and accessibility of academic programs. For this reason, such steps must be carried out in ways consistent with Board policies and guidelines, and colleges will need to review applicable Board Bylaws and policies and State law prior to taking specific actions.

#### 1.1. Definitions

An "academic program" is understood to mean a credit-bearing program of study leading to a degree or certificate which appears on the N.Y. State Education Department's Inventory of Registered Programs. An "academic department" is the basic unit established by the Board pursuant to the State Education Law to administer academic programs and service courses. Faculty and other instructional staff are appointed to departments, which have their own administrative structures, including chairs, elections, and departmental P & B committees. The term "department" encompasses all equivalent units, even if they are known locally by different terms, such as "school", "division", or "doctoral program". Programs, disciplines or units existing within academic departments are not departments. "Closing down" an academic program or department means abolishing it. "Suspending" an academic program means temporarily ceasing to offer it and to enroll students in its courses. "Consolidating" two or more departments means abolishing each and combining them to form a totally new department. "Merging" academic departments means abolishing one or more departments and transferring staff into another, existing department. "Reassigning" faculty means assigning them to teaching or other duties in a different

program or department but with their governance rights remaining in their home department. "Transferring" faculty means relocating them to a new department, with governance rights in that new department. Transferring of faculty may occur within a college or between one college and another.

## **2 WHO IS RESPONSIBLE FOR WHAT?**

### **2.1. The Board of Trustees**

The State Education Law gives the Board broad policy-making powers to regulate and control the educational policy and programs of The City University. The Board has ultimate decision-making authority on the closing of academic degree or certificate programs or the closing or reorganization of departments.

The State Education Law (Section 6206 (5 & 7)) specifies the powers and duties of the Board to approve and administer the courses leading to academic, professional and technical certificates, diplomas and degrees; establish positions, departments, divisions and faculties; and establish and conduct courses and curricula. As required by these sections of the State Education Law, the Board Bylaws reserve for the Board itself final authority for the academic program, curricula, and courses of the University.

### **2.2. The Faculty, Presidents and Chancellor**

Board Bylaw Section 8.6 provides that the "...faculty shall be responsible, subject to guidelines, if any, as established by the Board for the formulation of policy relating to... curriculum." The college governance plan specifies the structures and procedures through which faculty responsibility is exercised.

At most of the University's colleges, the faculty responsibilities as to curriculum and academic program have been assumed by college governance bodies described in formal governance documents approved by the Board. These bodies, while predominantly composed of faculty, may also include students and administrators, and have various names, such as college council, college senate and academic senate.

The powers delegated to the college president, with respect to his/her educational unit, in Bylaw Section 11.4(A)(a & c) include the "affirmative responsibility of conserving and enhancing the educational standards and general academic excellence of the college under his/her jurisdiction..." and "the immediate supervision with full discretionary power to carry into effect the bylaws, resolutions and policies of the Board."

The Chancellor is vested by the Board in Bylaw Section 11.2(A)(a) with responsibility to "report to the Board his/her recommendations for consideration or action on all educational issues affecting the University."

As noted above, Board Bylaw Section 8.6 recognizes the important function and responsibility of the faculty regarding curricula at the colleges; it must be interpreted consistent with the reservations of authority for the Board, the Chancellor, and the presidents. The expression of this authority is best found in the Board's "Statement of Policy on the Organization and Governance of The City University of New York" adopted on February 9, 1971, which expresses the policy of the Board that through the adoption of governance plans: (1) primary responsibility for academic programs and their academic organization would rest with the faculty; (2) ultimate college responsibility for

academic programs and their academic organization would rest with the college president; and (3) students and faculty would be consulted in the academic planning process. To this end, the Board Governance Policy provided for "an enhancement of presidential responsibility and authority in connection with matters concerning his college." (1971 Board Minutes, p. 17)

### **2.3. The Students**

As to the role of students, the Board provided that "both students and faculty should participate in the decision-making process at all units of the City University" (1971 Board Minutes, p. 19) and in furtherance of this goal, provided that since budgetary and planning matters affect all aspects of the college community, "decisions in this area should be arrived at only after all members of the [college] community have had a formal opportunity to make their views known." (1971 Board Minutes, p. 21)

## **3. WHAT IS THE PROCESS FOR REACHING THE DECISION?**

### **3.1. Closing Down an Academic Program**

The Board has ultimate decision making authority on the closing of academic programs. In making its determinations, the Board's Bylaws and governance policies provide for recommendations and input to be received from the Chancellor and college presidents. In a review of the academic programs of the college, the college president should consult with faculty through either the faculty body or the superseding college governance body established in the college's governance plan. The views of students should also be sought. This may be done through the college governance body, provided it includes students.

In cases where recommendations about programs are being made in the context of a Board declaration of financial exigency, the consultation required under the Retrenchment Guidelines effectively covers these consultation requirements.

In either case, the president's recommendation with respect to closing an academic degree program is transmitted to the Board through the Chancellor in the appropriate section of the University Report.

### **3.2. Suspending an Academic Program**

In some circumstances, a college may prefer temporarily to suspend offering an academic program rather than permanently closing and deregistering it. Procedures for making and implementing such a decision are the same as for program closure, except that the college is not required to report temporary suspension to the Board. Suspended programs should be clearly identified as such in the college catalogue.

### **3.3. Creating, Closing Down, Consolidating or Merging Two or More Academic Departments**

A recommendation comes forward from the college president, after consultation with faculty and students as set forth in section 3.1. above.

A recommendation emanating from a college for the creation of a new academic department, the consolidation or merger of existing academic departments, or the

abolition of an existing department, shall, after review by the Chancellery, be considered by the Board of Trustees Committee on Academic Policy, Program, and Research (CAPPR). If the recommendation is approved by the Committee, it shall be considered as a policy calendar item by the Board (Board Minutes 1990, pp. 117-8).

The impact of such actions upon personnel must be reviewed by the Office of Faculty and Staff Relations and the required personnel actions must be approved by the Board. New departments normally have a minimum of five full-time faculty members.

### **3.4. Transferring a Degree or Certificate Program to Another CUNY College**

Two colleges may agree to transfer an academic program from one college to the other. Such a transfer is a policy matter that must be brought to CAPPR and to the Board. It should come forward as a recommendation from the presidents of both colleges, following consultation with faculty and students as in 3.1. above, with the college receiving the program taking primary responsibility. The impact upon personnel must be reviewed by the Office of Faculty and Staff Relations and the required personnel actions must be approved by the Board. If this transfer involves complicated issues relating to personnel, students, or equipment, the colleges may enter into a written agreement. Colleges should contact the Office of Faculty and Staff Relations and the Office of Academic Affairs for assistance in writing the agreement.

## **4. REPORTING REQUIREMENTS: WHO NEEDS TO BE INFORMED?**

### **4.1 Closure or Suspension of a Program**

Having decided to close a program, a college must inform the Board by inserting a resolution to that effect in the University Report, Section AI (Academic Affairs, Special Actions). Following Board adoption of the University Report, the University notifies the State Education Department, and the Department removes the program from the Inventory of Registered Programs.

The resolution should specify the effective date for closing the program. Generally the college will close admissions to the program immediately. It may, however, choose to continue listing the program on the State Inventory until a specified future date to allow currently enrolled students to complete the program. The State Education Department will enter this termination date on the Inventory. Should the students require longer than anticipated to complete the program, the college may request an extension of the date for this purpose.

Once a program is closed, reactivation would require a new proposal from the college, approval by the Board, and registration by the State Education Department.

Program closures do not require a Master Plan amendment. Inclusion of a program in the Master Plan is authorizing and permissive rather than mandatory and directive.

Decisions to suspend an academic program do not need to be reported. However, the State Education Department expects that programs which have been inactive for more than two years will be formally closed and deregistered. Colleges will therefore need either to formalize the closure of inactive, suspended programs after this period or reactivate them.

#### **4.2 Creating, Closing Down, Consolidating or Merging of Departments**

Once a college has made a decision to create, close down, consolidate or merge academic departments, it must prepare a resolution for the Board policy calendar. The resolution should include the effective date of the action and should be submitted to CAPPB via the Vice Chancellor for Academic Affairs. The college must at the same time advise the Vice Chancellor for Faculty and Staff Relations of any impact on faculty or staff. If the action results in the closure of a program or a curricular modification, the college will need to inform the Board via the University Report and the Chancellor's Report, respectively, and the University will need to inform the State Education Department. (We are reviewing the question of whether, in the case of financial exigency, a different reporting pathway may be applicable.)

#### **4.3 Transfer of Programs**

The State Education Department registers programs at specific colleges. Thus the transfer of a program from one campus to another necessarily entails the closure of the program on one campus (see section 3.1 above) and the creation of a new program at another campus (see Faculty Handbook for the Development of New Academic Programs). If the receiving campus already has a related program, it may be possible to substitute a curriculum modification for a new program proposal at that campus. For example, the program from campus X might be absorbed into a related program at campus Y as a new track in the related program. In general, the State Education Department will accept something as a curricular modification if it differs from the currently registered program with respect to no more than one-third of the total credits in the program. Anything more is a distinct program.

A curriculum modification must be submitted to the Board in the appropriate section of the Chancellor's Report. Once the Chancellor's Report is adopted by the Board, the Central Office will inform the State Education Department. SED generally informs the college and the Central Office of its approval or raises its questions concerning the proposal within a few months.

#### **4.4 Who Else Needs to be Informed/Consulted?**

Apart from the procedural and legal requirements with respect to students, faculty, the Board and the State Education Department discussed above, there may be other major stakeholders who should be kept informed of decisions to close or reorganize academic programs and departments, for example, professional bodies and associations which certify programs or license graduates.

### **5. STUDENT INTERESTS**

Colleges have several options for providing for students currently enrolled in programs slated for closure or suspension:

- 1) make special arrangements to allow currently enrolled students to complete the program by a fixed date in the future.
- 2) if this is not possible, for example, because of financial exigency, encourage students to transfer to the same or similar program at another campus, or

- 3) encourage students to switch to a related program or programs at the same institution. This is only possible if the college offers other programs with closely related degree requirements, so that students do not lose significant credits in switching from one to another.

A university's legal obligation to students with respect to program closure is contingent upon a variety of facts. Case law in this area is limited and tends to be fact-specific. There are several guiding principles, however, which may be drawn from these cases, namely: (1) the termination of programs is in the administrative discretion of the governing board; (2) courts will not interfere with the educational and administrative judgment of the governing board unless it is shown to be arbitrary and capricious; (3) students already accepted into programs should generally be provided with a reasonable opportunity to finish such programs; (4) budget cuts may necessitate and justify the termination of programs with a limited or no phase-out period, but such a closing should result in fiscal savings; (5) timely notice of termination and assistance in transferring to a comparable program should be provided to enrolled students; and (6) notice of possible program closure should be provided to applicants and students when it is feasible to do so.

### **5.1 Guidance on Legal Responsibilities to Students**

Based upon these principles derived from the case law, the following specific guidance is provided. The advice varies depending upon whether the program is closed for institutional reasons or as the result of financial exigency arising from budget cuts.

#### **5.1.1. Institutional Reasons**

Generally, if the primary reason for terminating a program is not to achieve financial savings in response to budget cuts, but rather a planned reallocation of resources to other programs, students should be provided a reasonable opportunity to complete the program. Since CUNY is an integrated institution of higher education, if a program is terminated at one college and students are provided a comparable opportunity to continue the program at another CUNY college without significant loss of time or credits, this should constitute the legal equivalent of completing the program at the terminating college.

#### **5.1.2. Budget Cuts**

In a time of fiscal crisis, where, for example, the University must meet budget cuts, the termination of programs with a limited or no phase-out period to achieve financial savings would be permissible. In such a situation, reasonable efforts should be made to assist affected students.

### **5.2 General Notice of Possible Program Changes**

College catalogs and other CUNY and college publications should contain a prominently displayed notice that programs and course offerings are subject to termination or change. Until college catalogs are reprinted, stickers or inserts should be placed in catalogs, unless the current college catalog already contains a sufficient notice. Similar notices will be printed in the new CUNY admission guides (see Administrative Advisory Memorandum No. 95-1 for model language).

### **5.3 Notice of Specific Program Termination**

In addition to the standard notice of possible changes, if specific programs are being actively reviewed for termination, students should be provided written notice as soon as possible so that alternative planning may begin. Once a recommendation for the termination of a program is approved by the Board, students should be given immediate notice and assistance in planning for the completion of the program at the same college, another CUNY college, or alternative public or private institution of higher education.

## **6. FACULTY INTERESTS**

The State Education Law contains provisions which enable the Board to abolish the positions of faculty members, or transfer or reassign faculty within the college, in the event of the termination, merger or consolidation of programs or departments. Subdivision 7 of Section 6212 of the Education Law grants to the Board the authority to transfer or reassign tenured faculty to any college within the University, and Subdivision 8 provides the Board with authority to abolish or discontinue the positions of tenured faculty.

In the event of a departmental closure, the college is obliged to attempt to find a vacant position in the college which can be efficiently and capably filled by an affected tenured or certificated faculty member. There is no legal obligation to attempt to find a vacant position in another college. However, under Article 31.5 of the PSC-CUNY Agreement, the University's Instructional Staff Referral Service is available to members of the PSC bargaining unit whose positions have been discontinued.

While the Board Bylaws, policies and governance plans call for faculty consultation and input at various levels in the appointment of faculty to departments, ultimately the power to transfer and reassign faculty rests with the Board. The Board may therefore transfer and reassign faculty members from closed programs or departments, even without the agreement of the relevant personnel committees of the receiving department or college.

There are three possible ways of dealing with personnel affected by program or departmental reorganization arising from institutional decisions or budget cuts: non-reappointment, retrenchment or transfer. Non-reappointment concerns instructional staff members at the end of their appointment. Retrenchment concerns instructional staff members whose appointments are in effect. Transfers may occur for a variety of reasons, for example, when 1 ) an instructional staff member's position is eliminated; 2) departments are being consolidated; 3) a program is transferred to another college.

Each college's labor designee has been briefed on these procedures and has been provided with source materials. They should be consulted for answers to technical questions.

### **6.1. Non-reappointment of Instructional Staff for Institutional Reasons**

Except for tenured faculty, lecturers with certificates of continuous employment and Higher Education Officers with 13.3b appointments, instructional staff members continue in employment with CUNY only if they are reappointed at the expiration of their annual or multiple year appointments.

However, a higher education officer with a 13.3b appointment may be terminated after three consecutive annual evaluations in three successive years in which institutional factors specified in such evaluations indicate abolition of the function performed by the individual should occur. (PSC/CUNY Agreement, Article 13.12.a)

Instructional staff may be non-reappointed for institutional reasons, such as changes in projected enrollment or in response to budget cuts. The president of the college must make any institutional factors known, at every level of personnel action, to those faculty concerned with personnel decisions (e.g., departmental and college P & B committees) in a timely fashion, so that they can incorporate those factors into their reappointment deliberations.

## **6.2 Retrenchment**

### **6.2.1 Financial Exigency**

The Guidelines and Procedures for Discontinuance of Instructional Staff Personnel Mandated by Financial Exigency, adopted by the Board on April 27, 1992 ("Retrenchment Guidelines"), provides the procedures as well as the notification periods for the termination of instructional staff whose appointments are in effect. This document is the key document on retrenchment based upon financial exigency and the procedures contained therein must be followed.

### **6.2.2 Institutional Reasons Other Than Financial Exigency**

In the event of the abolition of faculty positions for institutional reasons other than financial exigency, the Board's Retrenchment Guidelines would not be applicable, except for provisions therein that such discontinuances not related to financial exigency would "generally occur over a longer span of time", that notification should be as early as possible, and notification time would be not less than that provided in the Retrenchment Guidelines.

With the exception of the notice provisions in the Retrenchment Guidelines, retrenchment for reasons other than financial exigency is governed by the Board's Bylaws, the Board's policies (such as affirmative action) and the collective bargaining agreement with the PSC. The order in which instructional staff are discontinued is prescribed in Section 6.9 of the Bylaws for tenured faculty and Section 6.12 for certificated lecturers. The basic unit of retrenchment would still be the academic department, as defined by the Board resolution or governance document establishing the academic department. Thus, even if there are different disciplines in the academic department, all non-tenured faculty must be discontinued prior to the discontinuance of tenured faculty, and no exceptions can be made for special educational reasons. Sections 6.11 and 6.14 of the Bylaws and Article 31 of the collective bargaining agreement with the PSC provide the rights of recall from preferred eligible lists for instructional staff. No priority for retention is prescribed among non-tenured and non-certificated instructional staff members, the presumption being that these staff members will be non-reappointed. As noted above, Article 13.12a provides a mechanism for the discontinuance of a Higher Education Officer series employee with a 13.3b appointment after three consecutive annual evaluations in which it is indicated that the function performed by the HEO should be eliminated.



### **6.3 Transfers of Instructional Staff**

The University's authority to transfer and reassign tenured faculty is contained in Section 6212.7 of the Education Law of the State of New York. The Bylaws of the Board provide, in Section 6.8, for the transfer or reassignment of instructional staff within the University. In this regard, Board Bylaw Section 6.8(a) provides neither "tenure nor the period requisite for the achievement of tenure shall be affected by transfer within the City University" and Section 6.8(b) as to reassignment provides:

Nothing herein contained shall be construed to prevent the Board from assigning any person having tenure to any appropriate position on the staff, but no such assignment shall carry with it a reduction in salary...

Board approval of all transfers must be obtained because a transfer affects a faculty member's appointment, seniority, and voting rights. Reassignments which are not voluntarily agreed to by the affected faculty member must also be submitted to the Board for approval. Reassignments, however, do not affect a faculty member's appointment, seniority, and voting rights because in reassignments, unlike transfers, governance rights remain in the faculty member's home department.

The Bylaws of the Board set forth, in Sections 6.10 and 6.13, the procedures to be followed to transfer a tenured or certificated instructional staff member to a vacant position in the college when his or her tenured or certificated position is abolished or discontinued.

The collective bargaining agreement with the PSC recognizes the University's right to assign and/or reassign staff in Higher Education Officer series titles.

#### **6.3.1 Transfer Into an Existing Department**

Staff may be transferred into an existing department for a variety of reasons, including: 1) the staff member may volunteer; 2) the staff member's position in his or her department may have been abolished; or 3) the staff member's department may have been merged into an existing department.

For tenured staff, seniority equals their date of appointment to the new department. For certificated lecturers, seniority equals the date of the issuance of the CCE. For non-tenured and non-certificated staff, seniority is calculated on the basis of continuous full-time service in a full-time instructional staff title.

#### **6.3.2 Transfer Into a New Department**

A college may create a new department by consolidating two or more departments. Every tenured faculty member transferred to the new department will have the same seniority (that is, the date of appointment to the new department). The president of the college may indicate in the explanation accompanying the Board Resolution how she/he intends to break ties in seniority. ~~For non-tenured and non-certificated staff, seniority remains unchanged.~~ For other non-tenured and non-certificated instructional staff, seniority remains unchanged.

### **6.3.3 Transfer of a Program to Another College**

Seniority of tenured faculty will depend upon whether the transferred program becomes a separate department or part of an existing department at the new college. If it is a separate department, the same considerations apply as in 6.3.2 above. If the transferred faculty become part of an existing department at the new college, the considerations described in 6.3.1 above apply.

Certificates of Continuous Employment have no validity outside the college which issued them. The seniority of non-tenured and non-certificated staff will be calculated on the basis of full-time continuous service in an instructional staff title in the University.

## **7. WHERE TO GET MORE INFORMATION**

### **7.1. Roles and Responsibilities**

For additional information on CUNY or college governance or Board of Trustees' Bylaws or State laws, contact the University Office of Legal Affairs.

### **7.2. Program Registration Matters**

Questions concerning reporting of program closures, new program proposals or curriculum modifications should be directed to the University Office of Academic Affairs. The following document pertains:

1. Faculty Handbook for the Development of New Academic Programs.

### **7.3. Student Matters**

For additional information on legal responsibilities with respect to students, contact the University Office of Legal Affairs. The following document pertains:

1. Administrative Advisory Memorandum No. 95-1, dated April 11, 1995.

### **7.4. Faculty Matters**

For further information, contact the University Office of Faculty and Staff Relations. The following documents pertain:

1. Article 13 of the Agreement between the City University of New York and the Professional Staff Congress.
2. Statement of the Board of Higher Education on Academic Personnel Practice in the City University of New York, dated September 22, 1975.
3. Section B of Terms and Conditions of Employment for Staff in the Executive Compensation Plan.
4. Guidelines and Procedures for Discontinuance of Instructional Staff Personnel Mandated by Financial Exigency.

5. Sections 6212.7 and 6212.8 of the Education Law of the State of New York.
6. Sections 6.8, 6.10, 6.12 and 6.13 of the Bylaws of the Board of Trustees.
7. Board of Trustees' resolution regarding Creation, Consolidation or Merger, or Abolition of an Academic Department.

**MINUTES OF THE EXECUTIVE COMMITTEE MEETING OF THE  
BOARD OF HIGHER EDUCATION OF THE CITY OF NEW YORK**

**HELD**

**FEBRUARY 9, 1971**

**AT THE BOARD HEADQUARTERS BUILDING  
535 EAST 80 STREET—BOROUGH OF MANHATTAN**

The Chairman called the meeting to order at 5:00 p.m.

There were present:

Francis Keppel, Chairman  
David Ashe  
Herbert Berman

Frederick Burkhardt  
James Oscar Lee  
Luis Quero Chiesa

N. Michael Carfora, Secretary of the Board  
Arthur H. Kahn, General Counsel

Chancellor Albert H. Bowker  
Deputy Chancellor Seymour C. Hyman

Vice-Chancellor Timothy S. Healy  
Vice-Chancellor Bernard Mintz

The absence of Mr. Poses was excused.

At this point the Committee heard representatives of the University Faculty Senate, the Legislative Conference, the United Federation of College Teachers and the CUNY Council of the American Association of University Professors, re the Board's Statement of Policy on The Organization and Governance of The City University of New York.

Upon motion duly made, seconded and carried, the following resolution was adopted:

**NO. 1. STATEMENT OF POLICY ON THE ORGANIZATION AND GOVERNANCE OF THE CITY  
UNIVERSITY OF NEW YORK:** RESOLVED, That the following Statement of Policy on the Organization and Governance of The City University of New York be adopted:

**STATEMENT OF POLICY  
ON THE**

**ORGANIZATION AND GOVERNANCE OF THE CITY UNIVERSITY OF NEW YORK**

On May 5, 1969, the Board of Higher Education adopted a statement on "The Restructuring of Governance at City University." That statement, in part, reads as follows:

The structure of a university in society must be responsive to the legitimate needs of its members. To do this today requires the creation of new processes for communication and decision-making which permit each group of participants to feel that it can influence the institution as a matter of both right and responsibility.

The establishment of such processes will not stifle dissent or eliminate the conflict of ideas which are central to the concept of a university. Rather, it would serve to create a climate in which rationality could be focused upon the issues which its members consider to be of greatest importance.

In considering the restructuring of the University towards these ends, four problems of major significance are evident.

1. The rapid growth in the size and complexity of the University makes it more difficult for the Board of Higher Education to be as responsive as it must be to the needs of the individual colleges. Means must be found of moving the focus of major decision-making closer to the colleges.

2. The present bylaws of the Board mandate similar patterns of institutional governance at each college. Means must be found to permit the institutions to take part in creating their own variations in patterns of governance.

3. There is at present no system enabling all members of the community to participate fully in University governance. Means must be found to create a flexible and responsive pattern for governance at the University-wide level.

4. Present policies and practices related to educational matters such as admissions and the creation of new curriculums should be reviewed. Means must be found of including the entire community in periodic examinations of such matters.

I. Despite the efforts of the Board to increase the participation of all groups in University governance, numerous factors have continued the pressure for increased centralization of control, policy and operation of the University. This increased tendency toward centralization has become a counterforce to the individual college's ability to operate autonomously and has increasingly slowed the ability of the University to react calmly, sensibly, and in a forward-looking way.

The advent of collective negotiations, under the Taylor Act, has been a noteworthy legal as well as practical, pressure toward centralization of University responsibilities. Under the law, the collective negotiating agents have exercised their right to deal with the University as a whole. The resulting contracts and structures have tended to make the office of the Chancellor the obvious direct court of appeals. Application of the contracts has also tended to impose uniform and rigid personnel practices across the entire University.

The funding agencies and their bureaus within the City, State and Federal Governments have made it increasingly clear that they no longer propose to deal with 20 separate units when they have available to them the choice of dealing only with the office of the Chancellor on behalf of all the units.

The expanding capital facilities program is vital to the growth and well-being of the University and all of its units. It is also true that the law which provides for the financing of this program, as well as the natural characteristics of capital programs, in terms of overall priorities and comparability of programs again tends to result in centralization of authority.

The State laws requiring University Master Plans and internal coordination of academic programs also have increased the pressures toward centralized policy making and control.

Last but by no means least of all the pressures are those that emanate from the growth of discontent in the student body, the rising aspirations of the minority communities, the student communities' demands for control of their own destinies, and the experiences of the public with the Board of Education. All these groups in times of crisis appear to be convinced that they must seek their victories at the office of the Board of Higher Education and not on the college campuses.

This increasing centralization of power and functional responsibility has literally overloaded the capacities of the members of the Board of Higher Education to discharge their responsibilities. The demands made on board members in terms of time as well as emotional resources are unconscionable and in fact are damaging to their ability to exercise their responsibilities in terms of problems at a policy making level. To this must be added the observation that presidential authority has been increasingly limited by the exercise of faculty prerogatives in personnel matters, in educational policy, as well as in the management of departmental operations. The limitations on presidential authority at the departmental chairman's level tend to restrict the presidential scope of activity at that level. In the same sense the active involvement of the Board in college business tends to limit the president's flexibility. Only recently the University has at last attained a reasonable degree of budgetary flexibility. It is now possible for the president to break away from the severe limitations of prior budgetary rigidity and make use of this flexibility substantially to improve internal college management and bring about academic reform and innovation that had not heretofore been possible. In practice, this tool can only be effective if academic quality management can be substantially improved down to and through the departmental level.

It is proposed that this trend to administrative implosion be reversed by a reestablishment and an enhancement of presidential responsibility and authority in connection with matters concerning his college. This should be accompanied by a parallel reemphasis on the responsibilities of the faculty to govern themselves with respect to appointments, promotions, tenure and the academic program. The faculty's responsibility for attention to duty, attention to teaching responsibilities, and limitation of outside involvements, as well as a reexamination of the department chairman's responsibility to the president as well as to his department colleagues, all are matters that are now being reexamined by the University Faculty Senate. The Board, through its Committee on Governance will continue to seek ways of increasing decentralization at all levels of the University.

It is, however, very clear now that in the absence of direct presidential management authority at the department level the present college, divisional and departmental operating procedures must be altered to encourage the development of academic excellence through faculty direction.

The chairman, as a faculty member of a given department, must have the confidence of the department members in order to provide academic leadership within the particular discipline in addition to his responsibility for the management of the department. This confidence can best be assured by continuing the practice of periodically electing chairmen by and from the faculty of the department. This must, however, be coupled with the clear presidential authority to appoint a department chairman at any time when the best interests of the college necessitate such action. Such authority necessarily includes the power of removal when necessary. Neither of these actions would be undertaken without prior consultation with the faculty of the department involved. Such actions are subject to the approval of the Board of Higher Education.

While the primary responsibility for the development and preservation of academic excellence is located in the faculty the ultimate responsibility rests with the president who is directly responsible to the Board. While this may be taken for granted, the bylaws of the Board should state explicitly to the college community that the president shall have the affirmative responsibility of conserving and enhancing the educational standard and general academic excellence of the college under his jurisdiction. Such responsibility shall include but not be limited to the duty to insure that his recommendations for the appointment, promotion and the granting of tenure are in accord with the immediate and long range interests of the college and that such recommendations contribute to the improvement of the academic excellence of the college.

In addition to improving the faculties' ability to uphold the quality of the academic program, which is treated in greater detail below, and the restatement of presidential responsibility in this area, the reinforcement of general presidential authority would require only minor changes in the Board's existing bylaws and policies.

First, the bylaws should be amended to eliminate the presently existing college committees of the Board and the Board should resolve itself to function through its presently existing functional committees, with the addition of new committees as the need arises. This will make it clear that the Board will deal on a functional basis with those matters of policy and principle that relate to all of the units of the University. Routine items concerning the internal operations of the individual colleges would be submitted directly to the Board rather than through the college committees. The technical screening of these matters will be handled by the Chancellor's office. The Board's policy agenda will then be limited to those matters of University-wide policy interest. It is intended that this procedure will clearly indicate to all involved that the president has the authority and responsibility for all college affairs and that local matters will be administered and settled at the campus level within the framework of established Board policy.

The Chairman of the Board shall appoint a member of the Board to serve as liaison with each college. Appointments shall be made annually on a rotating basis.

The emphasis of Board operations will be directed to the monitoring and developing of University-wide policy in functional areas through committees named to deal with specific areas.

All special and functional committees of the Board will have student and faculty representation with non-voting status. The members will be designated by the University Faculty Senate and the University Student Senate, although they will not serve as formal representatives of the Senates.

Second, the bylaws should be amended to provide for the establishment of a second Vice-Chairman who will be included as a member of the Executive Committee, in order to deal with the press of business and properly to divide the workload of the functional committees as well as to make it possible for the Board Chairman to discharge his responsibilities with a reasonable expenditure of time. It is anticipated that with the addition of a second Vice-Chairman, it will be practical for the Chairman to be active or be represented on each of the Board's committees.

Third, there is an additional element in this new structure that is vital to the preservation of the whole under the operation of college and presidential autonomy. For the Board to function properly, the Chancellor, its chief officer, will be vested with the authority to manage the agenda and to provide appropriate documentation. All agenda items must have been considered and approved by a committee of the Board or the Chancellor. Many items, including the routine Chancellor's Report, will appear as recommendations of the President approved by the Chancellor.

The Chancellor, at the University level, should have available a mechanism to provide from as broad a base as possible, the opinions and recommendations of the University's general public. The Ad Hoc Committee for the City University now provides this input on an informal basis as the need arises. It is now recommended that the Ad Hoc Committee be reconstituted as the University lay advisory council with membership designated by the organizations now represented on the Ad Hoc Committee, with the exception of the student, faculty and alumni groups for whom formal representation has been provided at other points in the University structure.

To ensure that the president has available to him the widest range of views and expertise in the consideration of college policy formulation, each president may establish an advisory council or councils. If the president so desires, the membership of the advisory council or councils may include a member of the Board of Higher Education.

Members of the college advisory councils are to be appointed by the Board of Higher Education as follows: where there is organizational representation the organization will designate its representatives; representatives from the surrounding geographical area will be nominated by the president and representatives from the City at large will be nominated by the Board of Higher Education. Students and faculty are not to be included on the councils since these groups should be fully represented through the formal internal college structure.

II. As an additional means of realizing the aims expressed in its statement of May 5, 1969, the Board at that time indicated that it would "... view with favor as a substitute for those sections of Article VIII (Organization and Duties of the Faculty) and Article IX (Organization and Duties of Faculty Departments) and other related sections of the Bylaws, which relate to the internal governance of the colleges and membership on any and all college committees, a new set of Bylaws for any unit of the University which wishes to create and propose a new governance structure. ...."

While a good deal of movement has been made toward reform of local governance, the process has been slow and tedious. During the past year, numerous problems and disputes have arisen concerning University and college governance. These matters have been the focus of attention of the University Student Senate, the University Faculty Senate, the Administrative Council, the Board's Committee on Law and the Board itself. This attention, however, has not produced lasting solutions to the problems raised. There has clearly been no lack of concern or effort in this area. The Board is well aware that the preparations for open admissions as well as student disruptions have been major factors in absorbing the focus of attention at the college level.

The Board at this time feels constrained to reiterate the closing paragraphs of its May 5, 1969 statement.

If the City University is to function effectively, channels of communication must always be available for the peaceful and reasoned discussion and decision of all problems which affect the educational process. At the same time, violent disruption of the activities of the City University and its component colleges must not continue. The Board notes the recent statement by the American Council on Education:

"If universities will not govern themselves, they will be governed by others. This elementary reality is increasingly becoming understood by all components of the university community."

The Board reiterates the pledge in its 1968 Master Plan that both students and faculty should participate in the decision-making process at all units of the City University. The Board pledges its best efforts to improve, and to increase the scope and effectiveness of such participation.

The Board has a paramount duty both to the academic community and to the people of this City to use its best efforts to ensure that the orderly working of the University shall continue. We ask the cooperation of the academic community and of all the people of this City to help us achieve this end.

With the intention of exercising its responsibility to the University community and the people of this City, the Board now reaffirms its commitment to achieve solutions to the four problems set out in its statement of May 5, 1969, and to that end, the Board issues the following statements and guidelines for college governance to guide the colleges in the development of new governance structures and to resolve some of the existing problems with respect to college governance. Concurrent with the adoption of this statement, the Chairman of the Board is directed to appoint a Committee on Governance. The Committee on Governance will be charged with the responsibility of reporting to the Board, after consultation with members of the University community, on the progress made toward the solution of governance problems within the University and recommendations for amendments to this statement. In addition, the Committee will present to the Board at such time as may be appropriate a comprehensive report on the status of governance at the City University and recommendations for future action in this area.



### The University

(a) The size and complexity of the university make it imperative that the focus of decision-making be moved closer to the colleges. At the same time it must be possible for all sectors of the university community to participate in decisions appropriately reached at the university level, and for the Board of Higher Education to exercise its overall responsibility while encouraging variations in local governance.

There are, in fact, two kinds of representation at the university level: first, the representation of constituent interests, now appropriately handled through the University Student Senate and the University Faculty Senate; second, the representation of individual colleges and the policies and practices which they have adopted through their own procedures of governance under established university regulations. These two patterns of representation do not lend themselves easily to combined representation on a basis of numerical equality. Moreover, the adequate representation of college needs and views at the university level can be achieved only through an organization in which each college is represented.

For this reason, some organization made up of the principal officers of the colleges, the presidents, appears indispensable. The Administrative Council, as it is now constituted and organized, has proven to be unwieldy. It is, therefore, recommended that the Administrative Council be replaced by a Council of Presidents, consisting of the college presidents, with the chancellor as chairman and the deputy chancellor as an ex-officio member. (Other members of the central staff should be available during the regular meetings of the council as their knowledge, expertise and advice are needed.)

To facilitate the development of joint positions on matters of university policy, the Council of Presidents should elect an executive committee to meet periodically with the executive committees of the University Faculty Senate and the University Student Senate on matters of mutual concern. The joint executive committees would be empowered to establish joint functional committees if and when appropriate.

(b) In an effort to ensure that present policies and practices related to educational and management matters within the colleges and the University are satisfactorily meeting the needs of the University community, and to involve the entire community in periodic evaluations of such matters, the Chancellor is directed to provide for a performance audit of each college and of the central administration. Such audit is to be performed every five years by a panel chosen by the Board of Higher Education from outside the University. The panel shall be directed to review all aspects of the colleges' operation and to consult with students, faculty and administrators of the college under review. The report of the audit shall be widely distributed to all members of the college community and the Board and reviewed by the Council of Presidents which shall make recommendations to the Board on the basis of its review.

### The Colleges

The statements which follow are designed to guide the colleges in the development of new governance structures, which when properly approved will replace the structure specified by the bylaws of the Board.

(a) The focus of major decision-making within the University is properly at the college level. Such decisions should not be interfered with by the University administration except where a college decision may affect another college or the University as a whole. Such decisions should not be altered by the Board, except where by virtue of its responsibility to the University community and the general community, action is deemed necessary to protect the legitimate interest of groups or individuals within the college community.

To ensure the integrity of college-level decision-making, new processes for communication and decision-making, which permit each group of participants to feel that it can influence the institution as a matter of right and responsibility must be established. Each college should be free to create its own governance structure to enable it to create a climate in which rationality can be focused upon the issues, which its members consider to be of the greatest academic importance.

The college community is composed of three basic elements, i.e., students, the primary reasons for the college's existence; faculty, the primary means of the development, preservation and transmission of knowledge; and the administration, which in addition to providing managerial and technical services, exists to provide leadership to the students, faculty and the college community as a unit.

In addition to these three groups, there exists others that influence and are influenced by the institution and should be provided with a means of participation in the process of decision making. These include the members of the general public of the City; the alumni of the college; and the members of the clerical, custodial and professional administrative staffs. College governance structures should include formal means of communication with these groups and provide for participation in the making of decisions which can reasonably be said to affect their interests.

**(b) The President:** In the context of this section, the term President includes the members of the college administration who are directly responsible to him and are appointed by him. The selection of a President to serve an individual college must be made by the Board of Higher Education as an exercise of its responsibility for the operation of the University. However, representatives of the college community will serve with the Board's search committee and an appointment will ordinarily be made by the Board only upon the recommendation of the search committee and the Chancellor.

The primary responsibility of the President is the conserving and enhancing of the educational program of the college under his jurisdiction and the providing of leadership to the college community for the purpose of achieving these ends. To carry out these responsibilities as the executive officer of the college, the President has the final responsibility and authority for decisions in the following areas: the quality of the faculty and academic leadership; preparation of the college budget and allocation of monies within the college; preparation and implementation of the college Master Plan; general management of the clerical, custodial and professional administrative staffs, the maintenance of order and the disciplining of members of the college community whose conduct threatens that order; and the general administration of the college in such a way as to meet the needs of the students and faculty and resolve disputes which may arise within the college community. While the President must hold the final responsibility and authority in these areas, the exercise of this authority should be governed by the following principles:

i) The final responsibility for development of the faculty must lie with the chief academic officer, the President. To this end, the President has the affirmative responsibility for passing on all faculty personnel actions, and in the case of the granting of tenure, the President should rely on the judgment of experts in the various disciplines to aid him in making a final decision. In cases of controversial, early, or other special tenure decisions, consultation with faculty members or other qualified persons within or outside the City University may be appropriate. Such consultation should be undertaken together with, or in agreement with, an appropriate elected faculty body-departmental divisional or college wide-within the college or University.

ii) Budgetary and Planning matters affect all aspects of the college community and, therefore, decisions in this area should be arrived at only after all members of the community have had a formal opportunity to make their views known.

iii) Matters of discipline must be handled in such a way as to provide for the protection of all individuals' rights to due process. The procedures must also protect the rights of the community and preserve the integrity of the college. For these procedures to be effective, the members of the community must share a commitment to the principle of institutional self-governance.

iv) The general administration of the college exists to serve the needs of the faculty and students and as an extension of the President's leadership role. Administrators are appointed by the president and responsible to him, and these administrators, together with the President as members of the college community, should be included in all college decision-making bodies since they will be responsible for implementing such decisions.

**(c) The Faculty:** Subject to the Board of Higher Education, the faculty is primarily responsible for academic matters, including the criteria for admission and retention of students, promulgation of rules concerning attendance, the awarding of credit and degrees, the quality of teaching, research and the guidance of students, and the general quality and advancement of the academic program of the college. The responsibility for the academic program extends to the personnel responsible for that program and, therefore, includes the selection, retention, promotion and quality of the faculty.

i) Matters having to do with the academic program, including student disciplining as a result of academic infractions, are the primary responsibility of the faculty. This responsibility carries with it not only the right to have the controlling influence in this area, but also the duty to contribute the time and effort necessary to satisfy this responsibility. Since the academic program owes its existence primarily to the student body it serves, the students should have a participating role in the academic decision-making process. Likewise, the administrators, who are to be charged with carrying out the decisions, should participate in the formulation of policy. All students and faculty are members of the college community and provision should be made for the representation in the decision-making process of all classes of students, full-time, part-time, matriculated, non-matriculated and students enrolled in special programs; and all classes of faculty, full-time, part-time, tenured, non-tenured, adjunct and visiting faculty.

Each department should be encouraged to develop a long range plan with regard to tenure policy. By having available information which clearly sets forth the consequences of tenuring members of the faculty in varying percentages, the department can be aided in setting guidelines for future tenure appointments. The criteria for all tenure appointments, however, must remain those of academic excellence, ability and merit without consideration to fixed quotas or percentages, but with consideration of long term effects on the growth, flexibility and excellence of the department and the institution.

While continuity is a valuable feature in a decision-making process, methods must be provided to permit the presentation of new ideas, and the promotion of experimentation designed to promote change. To this end, the academic decision-making process should provide for participatory input on the part of new and younger faculty members, and should provide means for the periodic change of leadership within the decision-making structure.

ii) The faculty has always had and shall continue to have the primary responsibility in the recruitment, promotion and retention of the faculty. The faculty has a special interest and responsibility to itself and for the good of the entire college community to ensure that the quality of its membership is maintained at a high level and that it continues to be responsive to the needs and aspirations of the student body. To ensure fairness and impartiality in personnel matters, those bodies at the departmental, divisional and college level which are charged with the responsibility of exercising the faculty's role in personnel matters should draw their membership from the faculty by election. One of the major functions of the undergraduate faculty member is classroom instruction and the consumers of that service, the students, are specially qualified to contribute to an

evaluation of the quality of classroom instruction. The faculty, therefore, has the responsibility to tap this resource and to provide for a participatory role for students in personnel decisions that are based in whole, or in part, on teaching effectiveness and the general student-teacher relationship. This may, but need not, include student membership on personnel and budget committees.

Student evaluations of faculty classroom and teaching performance should be institutionalized as one among a number of factors in considering promotion and tenure. The president shall take such student evaluations into account in making personnel recommendations to the Board, and the Board shall take such student evaluations into account in passing on such recommendations.

iii) Impartiality without the leadership necessary to provide the means to encourage academic excellence can produce nothing more than mediocrity. In restructuring college governance the following guidelines with respect to academic management should be followed:

#### IN THE SENIOR COLLEGES:

Each college should appoint an academic dean or dean of faculty who shall be granted the responsibility and authority, subject to the president, to function as the college's or school's chief academic officer charged with the presentation and development of the unit's academic excellence including but not limited to the recruitment, appointment, promotion and tenuring of the instructional staff. The importance to the faculty and the college of this position makes it imperative that the individual occupying the position of academic dean be acceptable to both the president and the faculty. Such appointments should be made by the president only with the advice and consultation of the faculty or an elected representative faculty body through the establishment of an appropriate search committee procedure. In addition each college, or each division and school within a college should establish a small academic review committee to review all appointment, promotion and tenure recommendations. The review committee should be chaired by the academic dean and its membership should be elected by the personnel and budget committee. Alternately, a majority of the members may be elected by the faculty with the rest chosen by the personnel and budget committee from among the departmental chairmen. It might be decided that for review purposes the academic review committee should replace the personnel and budget committee, or that it act as an additional review. In either case, the recommendations of the review committee should be made to the president and reported to the personnel and budget committee.

#### IN THE COMMUNITY COLLEGES:

In the community colleges teaching effectiveness and classroom performance should be an overriding consideration; these are also important in the senior colleges but there scholarship and professional standing play a more significant role. While the recommendations made above with respect to the senior colleges should also be implemented in the community colleges the overriding emphasis must be given to the development of means for the measurement and evaluation of teaching effectiveness and classroom performance. The community colleges are therefore directed - faculty, students and administration - to immediately begin studying means for the measurement and evaluation of classroom teaching performance. The suggestions contained in the paper "Evaluating Teaching Effectiveness in the Community Colleges." (Appendix) can be used as a starting point for such study.

The recommendations made above with respect to the community colleges have general applicability to the senior colleges as well. Those institutions should also develop means of implementing the type of suggestions contained in the Teaching Effectiveness Report, but in any event, should file with the Board a plan designed to accomplish similar ends.

(d) **The Students:** The student should be allowed the widest range of freedom of expression and inquiry to enable him to absorb from, as well as contribute to the educational process. The college exists for the preservation, development and transmission of knowledge and it is the students who enable these ends to be met.

i) Student activities are part of the educational process and take place within the context of the college community. These activities are primarily the students' contribution to the academic program and are a means of self-education. The students should have primary control and decision-making authority in these areas, but should tap the expertise of the faculty and administration when the need dictates.

ii) Because of the size and complexity of the student body, means of self-government must be devised which provide for the full representation of all segments of the student body and which can prevent the control of the decision-making bodies by a minority against the will of the majority.

iii) Since the administration of the college and the operation of the academic program directly affects the students and after graduation indirectly affects them as members of the geographical community, the decision-making process in these areas should provide for substantial student input to enable both to meet the needs of the students.

iv) The students are entitled to the full rights of any member of society and enjoy the protection of due process of law. With these rights go the corresponding duty to respect the rights of other members of the college community as well as the integrity of the community as a whole.

### **Conclusion**

The college community should be reminded that the rights and responsibilities of the constituent groups in the community are in no sense absolute prerogatives. The President has the duty to act affirmatively for the good of the community where either the students or faculty have abused their rights or neglected their responsibility. In a similar manner the Chancellor and the Board have the duty so to act when the President is at fault.

The Board believes that the college community can meet the needs of its membership only if the individual members share a commitment to self-government, which provides for the widest expression of differing views within a framework of rationality and calm designed to prevent interference with the rights of the individual members of the community. The Board further believes that self-government can only be successful if each community is permitted the freedom to design its own structure within a basic framework of rights and responsibilities. The Board, therefore, directs that each college of the University be free to design a governance structure within the framework of this statement. This freedom carries with it the responsibility of each segment of the college community to actively pursue the aims set forth in the Board's statement on May 5, 1969 and, therefore, the Board now directs that each college present to the board for approval a plan for college governance no later than September 1971. Until such plans are approved by the Board, the colleges are to be governed by any governance plan now in effect and the present bylaws of the Board of Higher Education.

As a condition for submission of governance plans to the Board for approval, such plans shall have been approved by the President of the college and also approved by a majority of the students and faculty voting in an election held for the purpose of approving the plan, provided however, that at least 30% of each constituency votes in the election.

The Board's Committee on Governance shall have the responsibility for reviewing plans so submitted to insure compliance with this statement and shall also review existing plans and recommend changes necessary to conform them to the guidelines contained in this statement.

NOTE: Appendix, "Evaluating Teaching Effectiveness in the Community Colleges" is on file with these minutes in the Office of the Secretary of the Board.

Upon motion duly made, seconded and carried, the meeting adjourned at 6:00 p.m.

N. MICHAEL CARFORA  
Secretary of the Board