

Faculty Senate Minutes #386

March 22, 2012

1:40 PM

Room L.61 NB

Present (37): Jana Arsovska, Andrea Balis, Elton Beckett, Erica Burleigh, James Cauthen, Demi Cheng, Kathleen Collins, Lyell Davies, Virginia Diaz-Mendoza, Mathieu Dufour, Janice Dunham, Jennifer Dysart, Terry Furst, Jay Paul Gates, Demis Glasford, Laura Greenberg, Maki Haberfield, Devin Harner, Veronica Hendrick, Charles Jennings, Shaobai Kan, Karen Kaplowitz, Kwando Kinshasa, Richard Li, Yue Ma, Vincent Maiorino, Evan Mandery, Roger McDonald, Sara McDougall, Brian Montes, Catherine Mulder, David Munns, Richard Ocejo, Rick Richardson, Raul Rubio, Francis Sheehan, Staci Strobl

Absent (11): Michael Alperstein, James DiGiovanna, Beverly Frazier, Lior Gideon, Richard Haw, Tim Horohoe, Anru Lee, Mickey Melendez, Manouska Saint Gilles, Denise Thompson, Pat Tovar

Guest: Professor Ned Benton

Invited Guests: Provost Bowers, Dean Lopes, President Travis

Agenda

1. Adoption of the agenda
2. Announcements & Reports
3. Adoption of Minutes #385 of the March 5, 2012, meeting
4. Ratification of a slate of candidates for the at-large FPC positions
5. Election of College Council reps from among at-large members of the 2012-13 Senate
6. Formation of a commencement poem selection ad hoc committee
7. Invited Guest: Dean of Undergraduate Studies Anne Lopes on Pathways
8. Proposed Resolution on Pathways
9. Proposed Faculty Senate statement on the principles of online education
10. Discussion of items on the agenda of the March 29 College Council meeting
11. Continuation of discussion of a proposal for a reduced teaching load
12. Update on online student evaluations and online posting of scores and comments
13. Budget report on all-funds non-tax levy budget revenues and expenditures
14. Invited guest: President Jeremy Travis & Provost Jane Bowers

1. Adoption of the agenda. Approved

2. Announcements & Reports [Attachment A, B]

The three honorary degree recipients for the June commencement ceremonies are Judith Jamison, Michael Meltsner, and Michael Perlin.

The Chancellor's announcement of plans to change CUNY's policy on sexual relationship to more closely reflect the recommendations of the John Jay Faculty Senate was reviewed [Attachment A]. Also reviewed was the lawsuit against CUNY's imposition of Pathways in which PSC President Barbara Bowen and UFS Chair and Vice Chair Sandi Cooper and Terrence Martell are the named plaintiffs [Attachment B].

3. Adoption of Minutes # 385 of the March 5, 2012, meeting

Minutes #385 were approved with the condition that the actual language of the motion made by Senator Staci Strobl about the Provost's failure to consult with elected faculty leaders be included in the Minutes. [The amended language, addressed to Provost Jane Bowers, is as follows: "Resolved, The Faculty Senate has today, March 5, learned that you selected faculty members to serve on the 8 CUNY Pathways committees without consultation with any elected faculty leaders and in a manner completely lacking transparency. This was undemocratic and violates the core principles and processes of shared governance. We call upon you to honor the principles of both consultation and transparency henceforth."]

4. Ratification of a slate of candidates for the at-large FPC positions

At the previous Senate meeting, the Senate chose a slate of candidates from among nominees for the six at-large seats on the Faculty Personnel Committee (FPC). Because no instructions had been printed on the ballot and because some Senators had reported after the meeting that they had thought they were limited to voting for only six rather than for all the candidates, if they wished, it was proposed that the secret ballot vote be redone. Objections to a revote were expressed and the Senate voted against holding a revote and instead agreed to sustain the results of the balloting at the previous meeting on March 5. The vote to sustain the results was 21-4-4. As a result the ballot being sent to the full-time faculty will comprise the names of six candidates approved by the Senate at its previous meeting.

5. Election of 2012-13 College Council representatives from among at-large members of the members of the 2012-13 Faculty Senate

The following faculty members elected to represent the full-time faculty on the 2012-13 Faculty Senate were elected to represent the faculty on the 2012-13 College Council: Adam Berlin, Erica Burleigh, Maki Haberfeld, Karen Kaplowitz, Anru Lee, Evan Mandery, Jean Mills, Richard Ocejo, Francis Sheehan, Staci Strobl. The following faculty members elected to represent the full-time faculty on the 2012-13 Faculty Senate who were elected to represent the faculty as alternate members on the 2012-13 College Council are Janice Dunham and Richard Li.

6. Formation of a commencement poem selection ad hoc committee

The following Senators agreed to serve on a commencement poem selection committee. The annual process involves a call to the faculty for an original occasional poem, blind judging, and a recommendation by the committee to the Senate, at which time the Senate shall decide whether to ratify the ad hoc committee's recommendation. The following Senators agreed to serve: Elton Beckett, Erica Burleigh, Jay Paul Gates, and David Munns. The Committee will make its recommendation at the Senate's April 4th meeting.

7. Invited Guest: Dean of Undergraduate Studies Anne Lopes on Pathways [Attachment C]

Dean Anne Lopes spoke about the national trend to streamline colleges' general education curriculum and the real need to facilitate the student transfer process.

She discussed the enormous resources that will be needed by the College to implement Pathways. She reported that the University is offering a maximum of \$150,000 to each College based on its Pathways implementation plan which she is responsible for developing. She spoke of her fear that this money will not be given to John Jay or that less than the amount of money we need will be given to us if the Pathways College Option [Attachment C] is not approved by the governance bodies of the College. The Senate discussed the constrained time line, the PSC lawsuit, the affect of Pathways on Middle States, the current general education curriculum, and student outcomes. Dean Lopes was thanked for speaking with the Senate and she expressed her appreciation for the opportunity.

The Senate expressed no opposition to the proposed college option, per se, [Attachment C] but did reiterate opposition to Pathways and participation in the implementation of it.

8. Discussion of the agenda of the March 29 College Council meeting [Attachment D]

The Senate discussed its objection to procedural decisions and to the lack of respect for and adherence to governance when President Travis unilaterally refused to permit the Faculty Senate's resolution on uncompensated work to be placed on the agenda of the March 29 College Council meeting. Upon reviewing the Senate's resolution on uncompensated work, President Travis asked Counsel Maldonado for a legal opinion; Counsel Maldonado then consulted with Vice Chancellor for Legal Affairs Frederick Schaffer and she then issued a written opinion to him [Attachment D]. The College Council Executive Committee was told by President Travis of these actions and he then ruled the Senate's agenda item inappropriate for consideration by the College Council. The College Council Executive Committee was not permitted to vote on the question on the grounds that the issue was not one that could be decided on by a vote.

Senators agreed that the item should have been placed on the College Council agenda and that an opinion of legal counsel and of the vice chancellor for legal affairs should not have superseded the right of the College Council Executive Committee or of the College Council to decide whether this matter is proper College Council business. The issue was characterized as a third party's authority over the Senate's ability to place items on the agenda of the College Council. The College Charter specifically states how items are to be placed on the agenda of the College Council. A Senator said he will move to amend the agenda of the March 29 College Council meeting so as to add the Senate's resolution to the agenda and, specifically, to the beginning of the agenda. He said that if President Travis rules his motion out of order, he will move to challenge the ruling of the chair, which is debatable and requires a two-thirds affirmative vote to prevail.

[The Senate suspended this discussion upon the arrival of President Travis and Provost Bowers and resumed it after the two guests left.]

9. Invited guests: President Jeremy Travis & Provost Jane Bowers [Attachment D]

The Senate discussed the Resolution on Uncompensated Work that the Senate had submitted for placement on the agenda of the College Council and the memo from Counsel Rosemarie Maldonado [Attachment D] upon which President Travis based his refusal to let the Senate's agenda item be even considered by the College Council Executive Committee. President Travis explained that his decision was made on the grounds that the item was not appropriate business for the College Council. Senate members discussed the legal and procedural implications of his decision. The Senate discussed the College Charter and how items go to the Executive Committee of the College Council whose authority is to vote as to whether to place specific items on the agenda and this was not done. President Travis stated that the Senate's resolution is about very important matters that should be discussed elsewhere at a more

appropriate forum. He said that how and where these issues get discussed and resolved is important.

A Senator said this is a substantive issue about process and Robert's Rules of Order is clear about this: the discussion and vote about placing the item on the agenda should have taken place at the meeting of the Executive Committee of the College Council. Another Senator said he is very troubled that the President unilaterally ruled the item to be inappropriate College Council business and blocked a decision by the College Council.

President Travis discussed the distinction between procedural and substantive issues on the table and said that these discussions should take place in the proper channels at the College and the decision he made was made based upon information provided by legal counsel.

President Travis said he has asked the Secretary of the College Council to call a special meeting of the Executive Committee of the College Council in the near future to discuss the scope and role of the College Council Executive Committee.

Senators said that this discussion is about the sense by the faculty that our rights and our role in the governance of the College is not respected and is being abrogated. Senators also said that the faculty is in favor of openness and debate in the governance process. A Senator pointed to a decision by the Provost to invite faculty members to participate in online student evaluations even though the Faculty Senate had voted its opposition to online student evaluation of faculty. Provost Bowers replied that the invitation to faculty had been part of a pilot study of student evaluation of both online courses and bricks and mortar courses but no decision has been made about brick and mortar courses yet.

8 (cont). Continuation of Discussion of items on the agenda of the March 29 College Council meeting

A Senator stated that now that the Senate has had this discussion with the President and Provost, he will definitely move to amend the College Council agenda to add the Senate's resolution to the beginning of the agenda and that he would challenge the ruling of the chair if President Travis rules his motion out of order.

The Senate next discussed how it will vote on Pathways at the College Council meeting if the Curriculum Committee approves the College Option, which many expect it to do; almost every Senator said he or she planned to vote no or to abstain.

10. Report on the College Budget [Attachment E]. Noted.

The meeting was adjourned at 4:30 pm

Submitted by

Virginia Diaz-Mendoza
Recording Secretary

ATTACHMENT A

CUNY Newswire - March 6, 2012

A MESSAGE FROM CHANCELLOR GOLDSTEIN

At The City University of New York, we are deeply committed to maintaining learning and work environments in which members of the University community may pursue their goals and objectives in an atmosphere of respect, sensitivity, and tolerance. To that end, I read with interest a recent request from one of the University's longstanding college governance organizations-the John Jay College of Criminal Justice Faculty Senate-that the University administration revise the University's Policy on Sexual Harassment to include provisions similar to those currently in place at Yale University relating to intimate relationships between faculty and students. Although Yale's policies may not necessarily be the appropriate model for this University, this suggestion provoked thoughtful and serious consideration of what essentially would involve a further strengthening of protections for students, faculty, and staff in ways that are intended to promote the values of respect, sensitivity, and tolerance.

I asked Frederick Schaffer, the University's general counsel and senior vice chancellor for legal affairs, to coordinate an appropriate policy review in consultation with the University's Office of Human Resources Management. Please find at the end of this message an initial draft of a proposed amendment to the section on consensual relationships in the University's Sexual Harassment Policy, with new language regarding intimate relationships between faculty or staff and students and, in a separate revision, between supervisors and non-student employees at the University. The original language can be found at:
<http://policy.cuny.edu/text/toc/mgp/ARTICLE%20VI/Policy%206.8/>.

There are two principal changes from the existing policy. First, the proposed amendment would prohibit (not merely discourage) intimate relationships between a faculty member or other employee and a student for whom he or she has professional responsibility. Second, the proposed amendment would continue the policy that strongly discourages an employee from having an intimate relationship with a non-student employee whom he or she supervises but adds a requirement that such supervising employee must disclose that relationship to his or her supervisor in order to avoid or mitigate conflicts of interest with respect to the supervision and evaluation of the employee.

I am sharing this draft with all college presidents and deans of university professional schools, the Professional Staff Congress and other unions representing CUNY employees, the University Faculty Senate, the University Student Senate, college governance organizations, and college student governments, and welcome suggestions, comments, and questions by May 1. Please share your views with the appropriate faculty, staff, or student governance organizations and unions, as the chancellery will be in touch with their leadership. It is my intention to present recommendations on the policy for adoption by the Board of Trustees in June.

Thank you very much for your attention to this matter.

Matthew J. Gelsky

Draft of a proposed amendment to the University's Sexual Harassment Policy

Intimate Relationships

1. Relationships between faculty or employees and students

Amorous, dating or sexual relationships, even when apparently consensual, ("intimate relationships") are inappropriate when they occur between a faculty member or employee and any student for whom he or she has professional responsibility. Those relationships are inappropriate because of the unequal power dynamic between students and faculty members and between students and employees who advise or evaluate them, such as athletic coaches or workplace supervisors. Such relationships necessarily involve issues of student vulnerability and have the potential for coercion. In addition, conflicts of interest or perceived conflicts of interest may arise when a faculty member or employee is required to evaluate the work or make personnel or academic decisions with respect to a student with whom he or she is having an intimate relationship. Finally, if the relationship ends in a way that is not amicable, the relationship may lead to charges of and possible liability for sexual harassment.

Therefore, faculty members and other employees are prohibited from engaging in intimate relationships with students for whom they have professional responsibility, including undergraduates, graduate and professional students and postdoctoral fellows.

For purposes of this section, professional responsibility for a student means teaching, counseling, grading, advising for a formal project such as a thesis or research, evaluating, hiring, supervising, coaching, making decisions or recommendations that confer benefits such as admissions, registration, financial aid, other awards, remuneration, or fellowships, or performing any other function that might affect academic or employment opportunities.

Any complaints filed under this provision shall be processed under the procedures of this sexual harassment policy.

2. Relationships between supervisors and non-student employees

Many of the concerns about intimate relationships between faculty members or employees and students also apply to relationships between employees and non-student employees they supervise. Those relationships therefore are strongly discouraged. Supervisors shall disclose any such relationships to their supervisors in order to avoid or mitigate conflicts of interest in connection with the supervision and evaluation of the employees with whom they have a consensual relationship.

For purposes of this section, supervising an employee means hiring, evaluating, supervising, or making decisions or recommendations that confer benefits such as promotions, raises or other remuneration, or performing any other function that might affect employment opportunities.



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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

----- X
BARBARA BOWEN as President of the
Professional Staff Congress/CUNY,
PROFESSIONAL STAFF CONGRESS/CUNY,
LOCAL 2334, AFT, AFL-CIO, SANDI E.
COOPER as Chair of the University Faculty
Senate, and TERRENCE MARTELL as Vice-
Chair of the University Faculty Senate and
Chair of the Baruch College Faculty Senate,

Plaintiffs,

-against-

CITY UNIVERSITY OF NEW YORK, and the
BOARD OF TRUSTEES of the City University
of New York,

Defendants.

----- X

Index No.

SUMMONS

Plaintiff designates New
York County as the place
for trial. The basis for
venue is residence. See
CPLR § 503.

TO THE ABOVE NAMED DEFENDANTS:

You are hereby summoned and required to serve upon Plaintiffs' attorney an
answer to the complaint in this action within twenty (20) days after service of this
Summons upon you, exclusive of the day of service, or within thirty (30) days after
service is complete if this Summons is not personally delivered to you within the State of
New York. In the case of your failure to answer, judgment will be taken against you by
default for the relief demanded in the annexed complaint.

Dated: March 20, 2012
New York, New York

Respectfully submitted,

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Hanah B. Kolko

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LOCAL 2332, AFT, AFL-CIO, SANDI E.
COOPER as Chair of the University Faculty
Senate, and TERRENCE MARTELL as Vice-
Chair of the University Faculty Senate

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

----- X
PROFESSIONAL STAFF CONGRESS/CUNY, :
LOCAL 2334, AFT, AFL-CIO, BARBARA :
BOWEN as President of the Professional Staff :
Congress/CUNY, SANDI E. COOPER as Chair :
of the University Faculty Senate, and :
TERRENCE MARTELL as Vice-Chair of the :
University Faculty Senate and :
Chair of the Baruch College Faculty Senate, :
:

Plaintiffs,

-against-

CITY UNIVERSITY OF NEW YORK, and the :
BOARD OF TRUSTEES of the City University :
of New York, :
:

Defendants, :
----- X

Index No.

COMPLAINT

Plaintiffs, PROFESSIONAL STAFF CONGRESS/CUNY, LOCAL 2334, AFT, AFL-CIO, BARBARA BOWEN as President of the Professional Staff Congress/CUNY, Local 2334, AFT, AFL-CIO, SANDI E. COOPER as Chair of the University Faculty Senate, and TERRENCE MARTELL, as Vice-Chair of the University Faculty Senate and as Chair of the Baruch College Faculty Senate, (collectively, "Plaintiffs") by their attorneys, Meyer, Suozzi, English & Klein, P.C., and Emery Celli Brinkerhoff & Abady, LLP as and for their Complaint, allege as follows:

PRELIMINARY STATEMENT

1. Plaintiffs bring this action because defendants have breached their obligations under a November 1997 settlement agreement (the "Settlement Agreement") between the defendants' and plaintiffs' predecessors. The Settlement

Agreement resolved a case then pending before the New York State Court of Appeals. It required the City University of New York ("CUNY") and the CUNY Board of Trustees (the "CUNY Board") to adopt a resolution recognizing and reaffirming that CUNY's faculty, through the University Faculty Senate and college faculty senates and councils, (collectively "Faculty") would be responsible for "the formulation of policy relating to the admission and retention of students including health and scholarship standards. . . . curriculum, awarding of college credit, and granting of degrees" On June 27, 2011, in violation of the Settlement Agreement, the CUNY Board passed a Resolution ("2011 Resolution") which formulated policy regarding these and other matters without properly including the Faculty in the resolution process and without the Faculty's first formulating the policy on those matters for consideration by the CUNY Board or its committees, as required by the Settlement Agreement. By excluding the Faculty from the process of formulating the 2011 Resolution, CUNY and the CUNY Board breached the Settlement Agreement.

PARTIES

2. The Professional Staff Congress/CUNY, Local 2334, AFT, AFL-CIO ("PSC") is a labor union with a principal place of business at 61 Broadway, New York, New York 10006. It is the certified bargaining representative of CUNY's faculty and professional staff.

3. Barbara Bowen is the democratically elected President of the PSC.

4. The University Faculty Senate ("Faculty Senate") is the democratically elected Faculty governance body in academic matters of university-wide concern at CUNY. The Faculty Senate is comprised of approximately 120 Senators

representing CUNY's approximately 19,000 full- and part-time faculty, and it provides a representative, collective faculty voice from each of CUNY's 21 campuses. The Faculty Senate, which is established pursuant to Section 8.13 of the CUNY Bylaws, is "responsible, subject to the [CUNY] board, for the formulation of policy relating to the academic status, role, rights, and freedoms of the faculty, university level educational and instructional matters, and research and scholarship activities of university-wide import." Members of the Faculty Senate's Executive Committee serve as voting members of the CUNY Board's committees.

5. The Senators serving on the Faculty Senate are democratically elected by CUNY's faculty.

6. Sandi E. Cooper is the Chair of the Faculty Senate, and an *ex officio* CUNY Trustee.

7. Terrence Martell is the Vice-Chair of the Faculty Senate and the Chair of the Baruch College Faculty Senate.

8. CUNY is a public university with eleven senior colleges, six community colleges, a law school, a School of Professional Studies, a Graduate Center, and a school of journalism. It has a principal place of business at 535 East 80th Street, New York, NY 10075. It is established pursuant to Article 125 of the New York Education Law Sections 6201 *et seq.*

9. The CUNY Board is CUNY's governing body. CUNY operates pursuant to Bylaws.

10. Each college within CUNY has its own faculty or academic council

or senate ("College Senates") which, pursuant to CUNY Bylaw §§ 8.6 and 8.7, is responsible for, among other things, "the formulation of policy relating to the admission and retention of students including health and scholarship standards therefor, student attendance including leaves of absence, curriculum, awarding of college credit, granting of degrees. It shall . . . conduct the educational affairs customarily cared for by a college faculty." College Senates "shall be the primary body responsible for formulating policy on academic matters."

11. Baruch College is a senior college within CUNY.

12. At Baruch College, the Baruch College Faculty Senate, chaired by Martell, is responsible for the duties set forth in Paragraph 10.

JURISDICTION AND VENUE

13. This Court has jurisdiction over CUNY pursuant to CPLR § 301.

14. Venue is proper in New York County pursuant to CPLR § 503(a).

FACTUAL BACKGROUND

A. The 1995 CUNY Resolution

15. On or about June 26, 1995, the CUNY Board adopted a Resolution of the Committee on Long Range Planning ("1995 Resolution"). Item Number 27 of the 1995 Resolution ("LRP 27") changed the number of credits required to obtain a CUNY degree and provided for a mechanism for CUNY's constituent colleges to obtain waivers from those credit requirements.

B. The 1995 Lawsuit

16. In August 1995, Irwin Polishook, in his capacity as President of the PSC, Sandi Cooper, in her capacity as Chair of the University Faculty Senate, and others commenced an Article 78 action in New York State Supreme Court in New York County, against CUNY, the CUNY Board, and others, to challenge the 1995 Resolution.

17. On or about April 30, 1996, Supreme Court, New York County vacated the 1995 Resolution, LRP 27, and remanded the matter to the CUNY Board.

18. The Supreme Court's 1996 decision was appealed, and on or about December 19, 1996 the Appellate Division, First Department, affirmed the vacatur of LRP 27, finding that LRP 27 lacked a rational basis, but otherwise reversed the decision of the Supreme Court. Polishook v. City University of New York, 234 A.D. 2d 165 (1st Dep't 1996).

19. The Appellate Division's decision was appealed to the Court of Appeals. In November 1997, while that appeal was pending, the parties entered into the Settlement Agreement. A copy of the Settlement Agreement is attached as Exhibit A.

C. The Settlement Agreement

20. The Settlement Agreement was contingent upon the CUNY Board's approving a resolution recognizing and reaffirming, among other things, that CUNY's faculty, through the Faculty Senate and College Senates, would remain responsible for "the formulation of policy relating to the admission and retention of students including health and scholarship standards...curriculum, awarding of college credit, and granting

of University Professors ("AAUP"), the American Council on Education ("ACE"), and the Association of Governing Boards of Universities and Colleges ("AGBUC"), which states in part:

The faculty has primary responsibility for such fundamental areas as curriculum, subject matter and methods of instruction, research, faculty status, and those aspects of student life which relate to the educational process. On these matters the power of review or final decision lodged in the governing board or delegated by it to the president should be exercised adversely only in exceptional circumstances, and for reasons communicated to the faculty. It is desirable that the faculty should, following such communication, have opportunity for further consideration and further transmittal of its views to the president or board....

The faculty sets the requirements for the degrees offered in course, determines when the requirements have been met, and authorizes the president and board to grant the degrees thus achieved....

27. The AAUP statement "On the Relationship of Faculty Governance to Academic Freedom" further provides that:

... Since the faculty has primary responsibility for the teaching and research done in the institution, the faculty's voice on matters having to do with teaching and research should be given the greatest weight. From that idea flow more specific principles regarding the faculty's role.... Since such decisions as those involving choice of method of instruction, subject matter to be taught, policies for admitting students, standards of student competence in a discipline, the maintenance of a suitable environment for learning, and standards of faculty competence bear directly on the teaching and research conducted in the institution, the faculty should have primary authority over decisions about such matters – that is, the administration should "concur with the faculty judgment except in rare instances and for compelling reasons which should be stated in detail." [quoting the AAUP's 1966 Statement on Government of Colleges and Universities]

28. CUNY Bylaw § 8.6 codifies the concept of shared governance at

CUNY:

The faculty shall meet at least once in each semester, or oftener, upon call by the president, or by petition of ten per cent of its members. The faculty shall be responsible, subject to guidelines, if any, as established by the board, for the formulation of policy relating to the admission and retention of students including health and scholarship standards therefor, student attendance including leaves of absence, curriculum, awarding of college credit, granting of degrees. It shall make its own bylaws, consistent with these bylaws, and conduct the educational affairs customarily cared for by a college faculty. The president shall preside at its meetings, or in his/her absence, the dean of faculty or a dean designated by the president.

A copy of CUNY Bylaw § 8.6 is attached as Exhibit B.

29. CUNY Bylaw § 8.13 further codifies the concept of shared governance at CUNY:

There shall be a university faculty senate, responsible, subject to the board, for the formulation of policy relating to the academic status, role, rights, and freedoms of the faculty, university level educational and instructional matters, and research and scholarly activities of university-wide import. . . .

A copy of CUNY Bylaw § 8.13 is attached as Exhibit C.

30. The 1997 Resolution passed by the CUNY Board pursuant to the Settlement Agreement recognizes and reaffirms the principle of shared governance at CUNY. It provides:

RESOLVED, that the Board, in the exercise of its authority to govern and administer the University pursuant to N.Y. Education Law § 6204[1], in connection with the Board's making educational policy, recognizes and reaffirms that the faculty, in accordance with CUNY Bylaws § 8.6, shall be responsible, subject to guidelines, if any, as established by

the Board, for the formulation of policy relating to the admission and retention of students including health and scholarship standards therefor, student attendance including leaves of absence, curriculum, awarding of college credit, and granting of degrees; that this responsibility is to be exercised through the college faculty senates pursuant to Board Bylaws or college governance plans approved by the Board, or the University Faculty Senate in accordance with CUNY Bylaws § 8.13, which states: "There shall be a university faculty senate, responsible, subject to the board, for the formulation of policy relating to the academic status, role, rights, and freedoms of the faculty, university level educational and instructional matters, and research and scholarly activities of university-wide import. The powers and duties of the university faculty senate shall not extend to areas or interests which fall exclusively within the domain of the faculty councils of the constituent units of the university"; and that such policies will then be considered by the Board or its appropriate committees in making policy decisions relating to educational matters.

E. 2011 – CUNY Violates the Settlement Agreement

31. Pursuant to the 1997 Resolution and CUNY Bylaws §§ 8.6 and 8.13, the faculty, through the Faculty Senate and College Senates, "shall be responsible" for the formulation of academic policy, subject to guidelines, if any, set by the CUNY Board.

32. Pursuant to the 1997 Resolution and CUNY Bylaws §§ 8.6 and 8.13, once the Faculty Senate or the College Senates formulate policy, "such policies will then be considered by the Board or its appropriate committees in making policy decisions relating to educational matters."

33. The Settlement Agreement and the 1997 Resolution require that the CUNY Board and its committees consider policy formulated by the Faculty.

34. The Settlement Agreement and the 1997 Resolution do not permit

the CUNY Board to formulate its own policy on educational issues, including those "relating to the admission and retention of students including health and scholarship standards therefor, student attendance including leaves of absence, curriculum, awarding of college credit, granting of degrees" and those "relating to the academic status, role, rights, and freedoms of the faculty, university level educational and instructional matters, and research and scholarly activities of university-wide import." Instead, they require that educational policy be formulated by the College Senates and Faculty Senate for consideration by the CUNY Board or its committees.

35. On or about June 27, 2011, the CUNY Board passed the 2011 Resolution that, among other things, changed (a) the courses that would be required to obtain a CUNY degree, (b) the ability of students to transfer credits among CUNY's institutions, and (c) the ability of CUNY's institutions to accept or reject transferred credits from other CUNY institutions as course prerequisites. The 2011 Resolution was passed without the Faculty's formulating policy, and without properly including the Faculty in the process. It was thus passed in violation of the Settlement Agreement and the Bylaws.

36. The 2011 Resolution, sometimes referred to as "Pathways," also created a task force charged with developing credit requirements, course requirements, degree requirements, and other responsibilities.

37. On or about November 1, 2011, as required by the 2011 Resolution, the task force released a report proposing a structure for a thirty-credit general education program to apply to all CUNY campuses. This structure identified the educational disciplines that would make up the general education program, defined the

