

ACADEMIC COUNCIL

Minutes of Videoconference Meeting**March 31, 2021****I. Consent Calendar**

1. Today's agenda items and their priority
2. Draft Academic Council Minutes of February 24, 2021
3. UCAP Guidance for Review of Academic Personnel Impacted by the COVID-19 Pandemic
4. April 14 Assembly Agenda topics

ACTION: Council approved the consent calendar.**II. Senate Officers Announcements**

- o **Mary Gauvain, Academic Council Chair**
- o **Robert Horwitz, Academic Council Vice Chair**

March Regents Meeting: The Regents meeting featured an update on the implementation of recommendations from the State audit of UC admissions practices and an update from the Working Group on Innovation Transfer and Entrepreneurship. It also included a presentation by Provost Brown and Pamela Brown, VP of Institutional Research and Academic Planning (IRAP) about the economic and social impacts of the University and a UC degree.

Systemwide Senate Priorities: Senate leadership wants Council to identify the highest priorities for the Senate, given Council's desire to be proactive and the Senate's limited faculty and staff resources. Leadership will schedule a discussion at the April meeting about how the Senate forms, supports, and reviews task forces, work groups, and other special groups.

Faculty Survey: Senate leadership plans to survey faculty about their experiences with remote teaching during the past year. The proposed survey questions will be circulated to Council and all Standing Committee Chairs for feedback in April.

Security Breach: The University will soon inform the broader UC community about a recent data security incident affecting the personal data of over 200,000 UC employees. Affected individuals will be informed by mail in the next week.

Investments: The Regents and the Chief Investment Officer are discussing a new fossil free investment fund option for UC employees in the retirement savings program. The Office of the CIO has also paused on making new investments in China-based companies as it studies the societal aspects and impact of these investment.

III. Systemwide Review of Presidential Policy BFB-BUS-43 Purchase of Goods and Services; Supply Chain Management

Council reviewed comments from Senate Divisions and Standing Committees to a set of revisions to Presidential Policy "BFB-BUS-43 Purchase of Goods and Services; Supply Chain Management. The revisions incorporate a new "Small Business First" program that requires UC to award all procurements valued between \$10,000 and \$250,000 to small businesses, minority owned businesses, or disabled veteran-owned businesses wherever practicable. It aligns with a

new state law that allows the University to bypass the competitive bid process, as long as it obtains price quotations from two or more qualifying businesses.

- Council was concerned that the University's decision to implement an interim policy before the Senate was able to opine breached the spirit of shared governance.
- Council members noted that the program will increase overall costs, both in terms of the price of services and equipment, and the administrative overhead needed to implement the program and maintain compliance. This new unfunded mandate will hurt campuses already struggling with budget cuts.
- Members are concerned that any additional costs that the policy entails would have to come from other sources, including categories in grants that, in turn, could affect a researcher's ability to carry out a project as funded.
- Individual Council members described instances in which the interim policy has already caused delays by requiring them to demonstrate that a small business is not available for specific purchases. This certification process will extend lead-time on many time sensitive procurements, affecting faculty members' workload and ability to make timely purchases and conduct research. The policy should allow easily-obtained and speedy exceptions for faculty who need to purchase highly technical materials from specific sources.
- Members noted that definitions of "small", "independently owned", and "diverse" businesses, and other terms lack detail. In addition, the removal of the requirement of California domicile for a business appears to contradict the program goal to generate growth in California small businesses. In addition, expensive expenditures such as entailed in construction are not subject to the Small Business First requirement, so the workload in satisfying the policy is not evenly distributed across campus units.
- Members noted that UC should support small local businesses, and should encourage purchasing from them, but in ways that do not increase bureaucracy, workload, and costs.

ACTION: Council will send a summary of comments to Vice Provost Carlson.

IV. Vaccine Distribution, Campus Opening Plans, and Reports from Division Chairs

Chair Gauvain and Vice Chair Horwitz invited Council members to identify issues, questions, and concerns related to campus re-openings for discussion with President Drake later today. The chair and vice chair are pushing for meaningful faculty, staff, and student involvement at every stage of planning and decision-making. They noted several broad areas highlighted at meetings of the UC Fall Capacity Working Group for which systemwide guidance may be useful:

Modes of Instruction: Key issues include determination of instructional format and the accommodation of changes to instructional format in response to student requests for flexibility. Given the multiple instructional formats campuses are considering, and the potential for additional work for faculty and confusion regarding instruction as fall draws near, Senate leaders have requested consideration of temporary systemwide provisions that limit the possible range of formats.

Research: There have been no COVID cases in laboratories and other performance and research spaces on the campuses that have been in use during the past year. However, some campuses are subjecting research and performance spaces to the same opening timetable as in-person instruction, which is set for Fall. Many researchers are ready to return to their campus research spaces now and would like to have campus research spaces open sooner than Fall.

Vaccines: UCOP is discussing a possible vaccine mandate for students, faculty, and staff, but it is unclear who will enforce such a mandate and how. Protecting individual privacy is also a concern.

Classroom Safety: Faculty are concerned about possible classroom disruptions around masking and social distancing requirements. The faculty job is to deliver instruction, not enforce requirements, manage disruptions, or dispense discipline. There should be clear campus policies around safety requirements and disciplinary consequences, as well as what to do if a transgression occurs so as not to position individual faculty members as enforcers by default. These concerns could be acknowledged and supported by a systemwide policy or guidance.

- Council members agreed that faculty must be at the center of discussions related to instruction and research, and that unless all stakeholders are seriously included in planning, they will feel imposed upon and resist.
- Members noted that many solutions will be local, but systemwide guidance would be helpful on issues such as maximum in-person class size and physical distancing requirements. Differences across campuses in these practices will appear ad hoc and could confuse faculty and students as to their basis. The Senate Division on each of the campuses can help define processes that inform local solutions in these areas.
- Members observed the need for UC to be sensitive to concerns about privacy, surveillance, and vaccines in certain communities, and to avoid behaviors that could result in public shaming of some sort. There is a potential for compliance to split across some demographic groups given different vaccination rates in communities by societal groups.
- Members noted that planning and carrying out different modes of instruction requires much time and effort, and that students perform better in classes with clear and regular expectations. In addition, UC should accommodate faculty who are legitimately too nervous about coming back to campus, but it will damage the faculty if any are seen to be taking advantage of this option for personal, not medical, reasons.
- It was noted that UC cannot mandate vaccines until the FDA removes them from the Emergency Use Authorization list; the FDA is expected to approve the Pfizer and Moderna vaccines soon, certainly by fall.
- Individual division chairs reported on campus reopening plans. Several are planning to accommodate up to 80% in-person occupancy, but all expect smaller classes and continuation of remote teaching. At least one campus will require faculty to remain resident in the community even if they teach online. Decisions about which courses will be in-person and which will be remote need to be transparent and involve faculty. There was discussion about the possibility that campuses may be forced to offer additional course sections to accommodate student requests and international students unable to return to California.

V. Consultation with Senior Managers

- **Michael Drake, President**
- **Michael Brown, Provost and Executive Vice President, Academic Affairs**

Spring update: President Drake said the recent one-year anniversary of the pandemic is a moment to reflect on lives lost and changed. Increased rates of COVID in other parts of the country and a small uptick in hospitalizations in California are cause for concern. There is hopeful news, however. UC campuses have very low rates of positivity. The University will soon issue guidelines for spring commencement that will permit safe outdoor gatherings with appropriate precautions.

Vaccinations: President Drake said statewide vaccinations are proceeding rapidly; California is expected to receive a large increase of doses by the end of April; and he expects most faculty and staff to have an opportunity to be vaccinated by early May.

Budget: The federal budget relief plan includes significant funding for the state and the University. UCOP is evaluating the legislation and its funding use requirements. It wants to direct some one-time monies to shovel-ready infrastructure projects that are energy efficient, address climate change concerns, and have long-term benefits.

Campus Safety: UCOP hosted the second of two symposia on campus safety, policing, and social justice issues on March 24. The goal is to improve safety and the feeling of respect and support felt by all campus community members. The University will use input from the symposia to develop best practices to share more broadly before the summer.

- Chair Gauvain said the Senate expects meaningful and ongoing involvement in decisions about campus re-openings. Systemwide guidance would be useful around several structural and operational issues related to instruction and research.
- Council members noted that faculty care about instructional quality and want to return to in-person teaching and research as soon as safely possible. The pandemic has shown the University and its faculty to be nimble, inventive, and committed. The climate for cooperation is strong on many campuses, where Senates have worked successfully with administrators on planning around classroom density, instructional models, and other issues. Faculty and administrators share an understanding that flexibility will be needed to reopen safety. Campuses should continue to involve the Senate in planning and more uniform consultation is needed across campuses.
- Council members noted that faculty have widely different views about re-opening. Many expect all on campus to be vaccinated, and want details about how a possible mandate will be monitored, verified, and enforced. Faculty also want campuses to make evidence-based re-opening decisions, but note that campus plans differ widely. Faculty would welcome systemwide guidance on permissible in-person class sizes, for example, and guidance that limits student expectations for maximum flexibility in course delivery in ways that burden faculty. Council members also noted that faculty do not want to enforce masking and other safety protocols, and they emphasized the need to support all faculty who do research, not just funded research performed in labs. They noted that faculty are considering protocols for colleagues who do not want to return to in-person instruction.
- President Drake said he expects re-opening planning to be a continuing conversation with the Senate and others, and he invited Council to convey specific examples of where shared governance discussions have been difficult. He said he is open to issuing systemwide guidelines that support campuses in decision-making and allow for a variety of approaches including virtual and small group learning. He said his goal is 85% opening in fall 2021, with a 15% cushion of flexibility that will differ across departments and schools. The cushion should support flexibility for faculty. He said he expects there will be increased interest among the faculty in remote or online instruction as a result of this experience.
- In response to a question about a vaccine mandate, the President said that UCOP is encouraging everyone to get vaccinated, but it cannot issue a mandate until the FDA formally approves the vaccines. He added that herd immunity can be achieved without every

individual vaccinated, and said he is encouraged by the increasing vaccine acceptance among all groups. He said he expects UC to maintain some level of required masking and social distancing at least through 2021, and a code of conduct will address violations of COVID restrictions.

- Provost Brown praised Chair Gauvain's [remarks](#) at the March Regents meeting on the nature of a UC-quality education and the role of faculty in that education. He said he is assembling a joint workgroup to discuss COVID impacts on faculty advancement and morale, and also wants to explore health sciences clinical faculty's specific morale and work-life concerns. He said UC is applying for a \$15 million Mellon Foundation grant related to graduate student diversity. He noted that he sees this effort as important to diversifying the faculty both at UC and nationwide. He added that UC needs to do better at reaching into its most diverse campuses to meet its goals for graduate student diversity.
- Provost Brown noted that Chegg and similar websites facilitate student cheating and illegal posting of copyrighted course materials. He thanked the faculty for their efforts in the recent open access agreement between UC and Elsevier. He said the University is awaiting admissions outcomes given the new policy suspending the standardized testing requirement. Finally, the Provost said he is considering a systemwide academic symposium on the Future of the University that incorporates an analysis of experiences and outcomes from remote teaching and learning during the pandemic.

VI. Systemwide Review of Presidential Policy on UC Research Data and Tangible Research Materials

Council reviewed comments from Senate agencies to a proposed presidential policy on UC Research Data and Tangible Research Materials. The policy reinforces existing UC Regents' ownership of UC research data and tangible research materials, and describes the role of campus leadership, researchers, and other UC workforce members in managing, retaining, preserving, accessing, sharing, and transferring those data and materials. It was noted that the policy may be a response to a high-profile 2015 incident in which UC sued a researcher after he transferred his data and federal funding to another university.

Senate reviewers raised many questions and concerns about the purpose and intent of the policy, and its consequences for faculty workload and campus budgets, intellectual property, and academic freedom. Reviewers noted that the policy would impose additional compliance requirements and administrative burdens on faculty, especially those in fields where data storage, sharing, and ownership issues are not normally addressed, including cultural and ethnographic research in communities that require tangible materials to be co-owned by the community. They noted that the policy will impose additional unfunded mandates on campuses given the additional staff, space, digital infrastructure, and other resources that will be required to support the new data storage and preservation requirements.

Council members noted that it is important to have policy safeguards against egregious behaviors, but UC policy should err on the side of protecting faculty's research products and creative work and provide them with the flexibility to pursue research as they see fit. Council will suggest that the authors consider an alternative policy more limited in its scope, targeted to areas for which there is a clear need and purpose, disciplinary areas where replicability of research results is an expected norm, or situations where legal requirements exist.

ACTION: Council will send a summary of comments to UCOP.

VII. Presidential Authority to Enact Salary Curtailments/Cuts

In January, the Academic Council asked UC Legal to provide formal guidance on a matter related to the proposed campus curtailment program in fall 2020. Faculty raised questions about the legal basis for the program, noting that Regents Standing Order 100.4 (*qq*) requires the President to declare an “Extreme Financial Emergency” before implementing a systemwide program that involves furloughs or salary reductions.

The Deputy General Counsel February 9 response to Academic Council noted that the Regents Standing Orders give the UC President and campus chancellors broad powers over workforce actions, and that no declaration of emergency is required prior to a furlough, curtailment, or salary reduction. UC Legal viewed the emergency authority in 100.4 (*qq*) as additive to the President’s existing authority to undertake furloughs, curtailments, or salary reductions.

UCFW-TFIR consulted TFIR member and UCB Law Professor Mark Gergen for independent advice. In his letter, Professor Gergen argues that the President and chancellors have very limited authority over salary reductions, at least as they pertain to Senate faculty.

- Council members reviewed Professor Gergen’s letter and found his advice sound and compelling. Council agreed that it should document its views on the matter with the administration.

ACTION: Council will forward the letter to President Drake.

VIII. UCORP and UCAF Letters in Support of Animal Researchers

Council reviewed a letter from UCORP expressing concern about the harassment of UC animal researchers and calling on the University to defend faculty with stronger public stances. A second letter from UCAF echoes UCORP’s concerns and calls for a proactive UC response to address the threats.

ACTION: Council endorsed the letters and will forward them President Drake.

IX. Healthcare Affiliations and Comprehensive Access

- **Carrie Byington, Executive Vice President, UC Health**

EVP Byington joined Council to discuss UC Health’s position on the University’s affiliations with external health care providers. Prior to the meeting, UC Health distributed a Report on Affiliation Impacts to Council. Dr. Byington noted that the University recently issued a letter of concern on California Senate Bill 379, which would prohibit affiliations between UC and healthcare providers that impose policy-based restrictions on healthcare. (The bill excludes the Veteran’s Administration and Indian Health Service.) A second bill, AB 705, would prohibit California healthcare facilities from limiting access to comprehensive care.

Dr. Byington said she joined UC shortly after President Napolitano charged a Working Group on Comprehensive Access to consider principles for affiliations between UC academic health systems and external health systems. The WGCA Chair’s report was issued in December 2019 and presented two options that remain under discussion: 1) allow affiliations with external

entities that include policy-based restrictions on healthcare services, conditioned under certain guidelines and safeguards, and 2) prohibit such affiliations.

- A Council member noted the distinction between UC academic medical centers' formal affiliations with religiously-based healthcare providers, and UC's other relationships with them, including as options in the UC health insurance network. The Academic Senate has never called for excluding Dignity Healthcare or similar providers from UC's network. Council members noted that discrimination occurs in religiously-affiliated hospitals around women's and LGBTQ healthcare, and there have been instances in which physicians training at a religious hospital have not had access to equipment they need to learn certain procedures. Members asked if UC was working with Dignity Healthcare to eliminate troublesome language from affiliation contracts and to minimize the potential for discrimination, and was developing formal guidelines around conflict-of-interest.
- Dr. Byington said UC Health understands the distinction between the relationships and thinks it is more consistent to permit both affiliations and insurance options. She said UC's geographic constraints make affiliations critical to UC Health's mission to serve all Californians, and UCR medical residency training programs depend on affiliations. She said UC Health and its affiliates are working under interim guidelines that permit emergency care, prohibit gag orders on medical advice and the discussion of medical options, and allow referrals to other facilities. UC Health has proposed additional guidelines and is committed to eliminating problematic elements of contracts with partners, adding language that supports UC values, and ensuring that medical students and residents receive comprehensive training in all relevant procedures. She said it is possible for UC to maintain its values while working with these organizations, and that many UC employees and poor and uninsured people could lose access to care if UC eliminated existing affiliations. SB 379 concerns her because it affects only UC, and it makes little sense to allow restrictions at a federal facility but not a religious facility; both restrictions are identical from a patient's perspective. Disaffiliation will not fix Catholic healthcare or their Ethical and Religious Directives (ERDs).

X. Healthcare Affiliations and Comprehensive Access

○ Lori Freedman, UCFW-HCTF Member

Professor Freedman noted that some of the ERDs are discriminatory, specifically designed to prevent sexual reproductive and clinical autonomy, and contrary to UC's values and its mission to provide comprehensive access to care. Affiliations could further entrench and expand these discriminatory policies and make UC ethically complicit in their expansion. She said UC Health's report is not transparent about its goal to secure greater market share in California, and it conflates the issue of affiliations with the issue of UC employee health plans, which are not at stake. UC Health provides little data to support its claim that affiliations will expand access to healthcare in California, and it has not been willing to discuss alternative partners that might help UC achieve that goal.

She said the Senate's Nondiscrimination in Healthcare Task Force report provides a middle path forward by stating that certain affiliations with discriminatory entities might be allowable if they include "overwhelming evidence" to support the "greater common good." However, a process and criteria for those determinations would be needed, perhaps through an independent panel. She also suggested that UC could grandfather less harmful affiliations and avoid starting new ones, especially in reproductive health. She noted that, at a minimum, UC should find a way to draw a bright line between UC patients and providers and the ERDs. She said HCTF wants an

assessment of the proportion of UC care that occurs through affiliations and who would work and receive care under the ERDs; more information about UC Health's expansion goals is needed, along with meaningful discussion of alternatives.

- Council members noted that UC could potentially serve the greater good by extending healthcare to underserved communities, but questioned whether UC's mission should really include providing healthcare to "all Californians." They noted that affiliating with discriminatory entities raised serious ethical concerns and that UC could lose credibility by doing so. They recoiled at the argument that discrimination would occur whether or not UC participates; noted that the right to advise patients on healthcare options is insufficient to ensure the provision of proper patient care; and emphasized that it is a false choice to posit that UC can either support reproductive rights or help the poor. They agreed that the Senate should challenge UC Health's arguments and encourage UC to consider alternatives. It was noted that the UC Merced community depends on Dignity for healthcare services.

ACTION: A small workgroup will draft a letter for Council's consideration.

XI. Executive Session: Nomination of 2021-22 Vice Chair

ACTION: Council selected Professor Susan Cochran of UC Los Angeles as its candidate for 2021-22 Vice Chair. The nomination will be forwarded to the Assembly of the Academic Senate for consideration at the Assembly's April 14 meeting.

XII. UCFW Letter on Bullying

A letter from UCFW asks the Academic Council to work with the administration to develop a systemwide policy on bullying that includes definitions, guidelines, resolution strategies, and consequences for bullying and abusive conduct. The UCFW letter also emphasized that instances of bullying may be more effectively and fairly addressed by independent campus-level bodies with specific expertise in bullying, rather than deans and departments chairs who are often less equipped to handle these matters. Council agreed that bullying has a serious impact on campus climate and faculty morale, retention, and recruitment.

ACTION: Council approved the letter.

Meeting adjourned at 4:45 pm
Minutes prepared by Michael LaBriola, Assistant Director
Attest: Mary Gauvain, Academic Council Chair