

**ACADEMIC COUNCIL
Minutes of Meeting
Wednesday, May 27, 2009**

I. Announcements

▪ **Mary Croughan, Academic Council Chair**

1. Agenda items for next Council meeting are due by 6/16/09.
2. Update on Shared Research Computing Pilot. The President did not accept Council's request to cancel or delay this project pending a more open RFP. The Academic Senate has been asked to nominate five faculty members to join the oversight board; UCOC is gathering names.
3. Report on the May meeting of the Board of Regents. The in-person meeting in San Diego was canceled due to concerns that the campus already had enough to handle with swine flu concerns. The teleconference agenda was scaled-down from the original agenda. The appointments for Chancellor of UC San Francisco and UC Davis were approved. The draft Senate proposal to award honorary degrees to students who were prevented from completing their UC degrees due to Executive Order 9066 in World War II was postponed to July. A brief discussion was held on a proposed standing order to establish a policy process for implementing furloughs and salary cuts; it will be an action item at the July Regents' meeting.

II. Consent Calendar

1. Approval of the April 29, 2009 Minutes

2. **Endorse UCOLASC Letter Opposing HR 801.** The National Institutes of Health has a policy of mandating public access to scientific research funded by that agency within twelve months of publication in a scientific journal. Representative John Conyers introduced a bill, the Fair Copyright in Research Works Act (HR 801), that would repeal this policy and prevent other federal agencies from adopting similar ones. UCOLASC has asked Council to urge UC to advocate against the passage of HR 801.

3. **Approve Draft Senate Letter Regarding Amendments to APM 028.** Proposed amendments to APM 028 were sent for systemwide review. The revisions reflect changes in the conflict of interest codes required of state agencies, and largely constitute technical changes.

4. **Endorse two members-at-large nominations to serve on ACSCOLI.**

ACTION: Item 4 was removed from the consent calendar and was to be discussed as New Business. Council unanimously approved the remainder of the consent calendar, with a minor change to the April Council minutes.

III. Agenda

ACTION: The agenda was approved with a minor correction.

IV. Furlough / Salary Reduction Policy

ISSUE: President Yudof proposed a new Regents' Standing Order 100.4 to provide a framework in which the President could ask the Regents to declare a state of financial emergency and grant him special authority to implement furloughs or salary reductions at individual campuses (per Chancellorial request) or across the UC system. An accompanying policy outlines the guidelines for implementation.

DISCUSSION: Some Academic Council members argued that such extensive revisions are required to make the proposed policy acceptable that Council should oppose its presentation to the Regents at their July meeting. Some divisions formally voted to oppose the adoption of the SOR as incompatible with shared governance. Several members questioned the need for and intent of the policy, given that the President already has the power to unilaterally impose salary reductions. Common concerns across all campuses included: the lack of a sunset or review clause and mechanism to declare an end to the emergency; the ability for the President to act before seeking approval or engaging in consultation; the authority of the President to override policies other than those governing furloughs and salary cuts; the conflation of emergencies such as natural disasters that require quick action with fiscal emergencies, which can be foreseen and dealt with through regular channels of consultation; lack of clarity surrounding the way in which salary cuts and furloughs would be implemented (e.g., would cuts later be restored, would they apply to employees who are externally funded, etc.). Other members argued that it would be unwise to unilaterally oppose the policy, essentially ceding the Senate's place at the decision-making table. Others emphasized that there will be little time for the University to respond to the budget crisis, so it will be pointless for the Senate to request further reviews and protracted dialogue. It is important for the Senate to proactively highlight the key issues. Others responded that the financial crisis does not warrant giving the President unprecedented power, and encoding it in a Standing Order. Some divisional chairs expressed concern that the policy would give the President too much power over campus decisions, while others asserted that the guidelines would provide the Senate with a formal voice in budget negotiations that it currently does not have. A member noted that the policy reinforces the President's belief that campuses should have the authority to implement local solutions to the budget crisis, with some oversight from OP. A member suggested forming a Standing Emergency Committee that could represent the Senate without protracted systemwide reviews in order to respond nimbly and ensure Senate input. A member noted that during the fiscal crisis in the 1990s shared governance was ignored; today the Senate has an opportunity to participate in what will be very difficult decisions. Another member stated that the Senate only has the authority to advise the President on budget issues. Because the SOR includes a specific requirement of consultation, it is valuable. The guidelines also provide a framework for the development of a Senate-administration budget plan, and set out parameters for consultation on the campuses, ensuring that the Chancellors must involve the Senate substantively. Vice Chair Powell stated that he trusts the President and noted that the President understands and supports shared governance.

ACTION: Council endorsed sending a letter to the President summarizing significant points and stating that while it opposes the policy, it looks forward to

participating in the budgetary process and shared governance at this difficult time (1 opposed, 2 abstentions). All responses from the systemwide review will be appended.

V. Executive Session: TFIR / UCFW Recommendation to Ensure Adequate Funding for UCRP

ISSUE: In response to the funding challenges of UCRP, TFIR and UCFW recommend dramatically increasing contributions to the fund in accordance with the Funding Policy adopted by the Regents in September, 2008 (15 year amortization of unfunded accrued actuarial liability) as soon as possible.

ACTION: Council endorsed forwarding UCFW's recommendations to the President requesting that he send it to the Regents (2 abstentions).

VI. Funding for UCUES

ISSUE: UCEP requests that the Academic Council endorse its recommendation to fund the biannual University of California Undergraduate Experience Survey (UCUES).

DISCUSSION: UCEP's chair stated that the survey provides valuable longitudinal information that can be used in program reviews and accountability efforts, as well as to improve students' experience. A member suggested that the administrators add questions to track the effects of the budget cuts on the student experience.

ACTION: Council unanimously endorsed forwarding UCEP's letter to the President and Provost.

VII. Consultation with the Office of the President – Senior Managers

- Mark Yudof, President
- Lawrence Pitts, Interim Provost and Executive Vice President
- Jack Stobo, Senior Vice President, Health Sciences and Services
- Katherine Lapp, Executive Vice President, Business Operations

SVP Stobo

SVP Stobo addressed the issue that some deans of UC Schools of Medicine had already begun to implement salary reductions through salary reductions or re-negotiations. This issue was brought to his attention by members of the Academic Council and he immediately ordered a stop to it until the President has an opportunity to present a plan to the Board of Regents regarding salary reductions. He sent a second letter clarifying that only with the approval of the systemwide Senate can reductions be made to the "X" component of salaries in the clinical series. Any reductions to Y and Z must also be negotiated with the individual faculty member and the local Academic Senate.

Comment: Several members commented that a significant proportion of X funding is not from the state general fund and expressed concern that deans could reduce salaries by shifting funds or taking money from other categories, such as Z.

Comment: Several members urged central administrators to tell campus administrators that their budgets will not be approved unless they document that they genuinely have consulted with the Senate.

Comment: A member commented that the great majority of faculty at the medical schools are not Senate members, so protecting their salaries goes beyond the Senate.

President Yudof

- President Yudof stated that in 2007-08, UC's state funding was \$3.3 billion. In the governor's current proposed budget for 2009-10, UC's appropriation will be \$2.5 billion (\$800 million less). This figure includes \$600 million in federal economic stimulus funding that will off-set the cuts. In the current fiscal year (by June 30) the University would need to cut an additional \$91 million. Next year the University would need to cut \$427.9 million, for a 13 month total of \$519 million in cuts (this figure takes into account the \$211 million in student fee revenue resulting from fee increases already approved by the Regents). Over two years (2008-2010), UC's net state-funded budget will have fallen by 19 percent, or \$619 million, from the level of funding in 2007-08. The budget does not include funds for any additional expenses, such as faculty merit increases, increases in health care costs, or salary increases for union members as a result of the AFSCME settlement. The University will incur an additional \$200 million in mandatory costs (e.g., increases in energy and health care costs), and \$122 million in costs due to unfunded over-enrollment (students for whom the University receives no funding from the state). The governor's proposed budget also calls for the eventual elimination of the Cal Grants program, beginning with the class entering in 2009 (current students would continue to receive grants until they graduate). All outreach funding also was eliminated. The proposed state budget nearly offsets the funds that UC anticipates receiving from the economic stimulus package, not including funds for research.
- The magnitude of the proposed budget cut is enormous. If the University implemented a 12-day furlough (saving approximately \$127 million), in combination with an additional 15% fee increase (providing roughly the same amount in revenue), this would provide only half of the funds needed to close the \$500 billion gap. Long-term solutions are more difficult. Over 80% of the University's costs are attributable to personnel; quality education is human-resource intensive. Limiting enrollment will make a significant difference only several years after implementing limits. Class size, faculty workload, and the average time to degree may increase. The faculty and administration must examine different models of delivering education while maintaining quality.
- State Senator Yee has introduced a bill to authorize a constitutional amendment that would give the legislature constitutional authority over UC. The University will vigorously oppose this legislation.

Interim Provost Pitts:

- Interim Provost Pitts expressed concern that the campus divisional Senate structure is not well-positioned to respond during the summer break. Each campus will be given a budget once the University receives the final figures from the state. The campuses will

have to respond in a short period of time, most likely over the summer. Division chairs should think about how they can prepare their Senates to participate effectively.

- Interim Provost Pitts stated that the University must think about what it will look like with less money. UC may have to become a smaller University. Given the lead time one needs in order to achieve structural savings by eliminating programs, we must begin immediately to re-envision the University. Furloughs and salary cuts are only temporary, one-time savings, which do not get built into the base budget for the following year.

Q&A

Q: Why is there a need for the furlough and salary cut policy? Can you use the extant policies to enact your budget plan? The policy, as written, cedes too much authority to the President.

A: President Yudof countered that his aim was to increase consultation and that the language was carefully crafted to suspend only human resources policies. He stated that it is far more dangerous to have a President with the inherent authority to do whatever he pleases (this is the current policy) than to have a policy that encodes consultation with the Senate and requires the agreement of the Board of Regents in a public vote with time for public comment.

Q: Why are natural disasters included in a policy to address a foreseeable fiscal “emergency?” The circumstances are so different and require disparate responses and amounts of authority and consultation, and should be addressed in separate policies.

A: President Yudof responded that he was trying to write a policy that covers all circumstances.

Q: How will campus budget plans be vetted? Chancellors must be given guidance.

A: President Yudof answered that provisions in the policy outline the steps that Chancellors must take and that the President ultimately will review and approve or reject each plan.

Comment: The power to implement salary cuts should be applied only to those positions funded by state general funds, not to positions funded by federal or private grants.

A: President Yudof stated that there are serious equity issues to this position. He noted that there are strong arguments on both sides. It seems strange to cut \$96 million in order to affect 4% of the budget. But he believes that grant funds for salaries would not be lost; it could be used for other purposes, such as hiring postdoctoral fellows. If the pain is not shared and we exempt parts of the university, we lose a sense of community and being in this together.

Q: The draft guidelines on the furlough and salary reduction policy include a provision about forming a strategic planning committee. Are you considering broadening the charge to have Chancellors appoint strategic planning committees immediately?

A: Interim Provost Pitts responded that he probably will ask the Chancellors to convene these committees.

Q: Are graduate student stipends considered salaries, and thus subject to salary reductions?

A: President Yudof responded that graduate student stipends are excluded from the category of compensation subject to reductions.

Comment: The University should consider a high profile response to the budget situation that captures public attention. For example, if you decide to enact furloughs, completely close the University. We need to make students and parents aware of the situation by reducing services, as well.

Comment: These budget cuts are only part of a long-term decline in state support. The University should make cuts that send a message to the public. If the University is no longer publicly funded (UCSD receives only 12% of its budget from state funds, for example), people will have to pay for the services they want. Would you consider a substantial, immediate surcharge on fees?

A: President Yudof stated that while he is considering all options, this would be a high-risk strategy that could have even more serious negative consequences for the University. It would also impact the lowest-income students at the same time as the elimination of Cal Grants, which would significantly reduce access.

Q: An enormous portion of the University's expenditures and liabilities are for retiree health care. Are you looking for ways to increase revenues by increasing retirees' participation in the University's clinical enterprises, i.e., can the University provide health care to its own retirees?

A: SVP Stobo responded that the University is exploring this option and also is examining better preventive care and contracts with health insurance plans. There is unlikely to be a boom in clinical care revenues, as patients are delaying elective surgery due to cost.

Q: Would you consider selling UC real estate? Are you considering cuts to medical benefits for retirees?

A: President Yudof stated that he has not examined selling real estate. EVP Lapp noted that a subcommittee of the President's Task Force on Post-Employment Benefits is examining retiree medical benefits. The University may be able to save some money by raising co-payments, changing coverage, etc. Both the employee and retiree medical plans are funded through the University's operating budget, so costs must be contained.

VIII. Compliance Measures: Senior Vice President Vacca, Compliance and Audit, Vice President and General Counsel Charlie Robinson, and Deputy General Counsel David Birnbaum

ISSUE: The Academic Council invited senior administrators to discuss the various compliance measures required of faculty members and the role of the office of Compliance and Audit.

DISCUSSION: SVP Vacca circulated a draft list of compliance measures. The list was short, incomplete, and without the detail requested by Council. Council members asked about ways to mitigate the burden of measures required by the Regents or administration. Interim Provost Pitts stated that his office will evaluate existing reports to determine if they are still useful. SVP Vacca noted that her office has taken steps such as integrating the ethics training required by the Regents into the conflict of interest training and making improvements to the sexual harassment prevention training based on faculty feedback. General Counsel Robinson noted that while offering such trainings can protect the University from large payouts, the aim of the ethics and sexual harassment prevention trainings is not solely to meet legal requirements, but to provide an environment that promotes ethical conduct and attempts to minimize sexual harassment. A Council member asked whether a central website could be developed to make it easier for faculty to comply at any time. Another member asked how many FTE are devoted to compliance efforts and what is the cost (there are seven FTE at the systemwide office). A Council member asked whether faculty who are philosophically opposed to the sexual harassment training can be excused. General Counsel Robinson stated that this requirement is a state law, and the law does not provide for exceptions.

ACTION: Chair Croughan will draft a letter to SVP Vacca formally requesting a complete list of compliance measures.

IX. Open Access Policies

ISSUE: UCOLASC has proposed that the University actively encourage open access to publications by: (1) promoting national legislation and policies by federal funding agencies that support open access; (2) educating UC faculty about open access issues; (3) promoting open access initiatives at the University; and (4) bargaining with journal publishers for open access to articles by UC authors.

DISCUSSION: UCOLASC Chair Larry Armi and member Shane Butler joined via telephone. Chair Armi explained that current NIH rules require that research funded by that agency be made publicly available within twelve months of publication in a journal. The 12-month delay protects the publishers' subscription base but allows the general public to access the products of taxpayer-funded research. UCOLASC would like the University to promote the expansion of open access policies and the extension of the NIH policy to other federal funding agencies. UCORP's Chair asked Chair Armi to describe UC's arrangement with Springer, and asked whether it could be a model for other publishers. Chair Armi stated that all papers published in Springer journals whose first authors are affiliated with UC are designated open access immediately upon publication. He noted that negotiations with other major publishers to have been unsuccessful in getting them to adopt this same model, and that most fields do not have open access journals, particularly prestigious ones. UCPB's Chair stated that UCPB strongly supports this effort, and emphasized the importance of educating UC faculty about publishing venues and arrangements supporting open access. A member asked whether UCOLASC supports the idea of using the California Digital Library as a venue to post all UC faculty

research online. Chair Armi replied that a similar proposal was rejected by Council a few years ago because of complex copyright issues. The California Digital Library maintains electronic versions of articles in the eScholarship Repository, but authors are free to publish in the journals of their choice. However, eScholarship can only post articles to which the author retains the copyright. UCOLASC's current recommendation intentionally avoids the issue of copyright. Because copyright issues are complex, UCOLASC prefers the approach of funders requiring open access after a certain period of time. A member asked whether fulfilling open access requirements would place an additional burden on faculty members or be an unfunded mandate on University resources. Chair Armi stated that at UC, the requirement is being fulfilled by the libraries and faculty do not find it to be a burden.

ACTION: Council unanimously endorsed forwarding UCOLASC's letter to the President.

X. UCOLASC on Google Settlement

ISSUE: University of California libraries have been participating for several years in Google's project to scan books held by major libraries and make them available to the public in a vast online repository. Commercial authors and publishers sued Google for copyright infringement on behalf of all copyright holders. As authors and copyright owners, faculty are included in the settlement unless they take specific steps to opt out. UCOLASC believes that the interests of academic authors are not always the same as those of the commercial authors and publishers who spearheaded the suit, and UCOLASC urges the Academic Senate to file a letter with the court describing its concerns.

DISCUSSION: UCOLASC Chair Larry Armi and member Shane Butler joined via telephone. Professor Butler reviewed the history of the Google digital library project. UC was one of four university libraries that are partnering with Google in its digitization effort. In 2004 the Author's Guild, which represents many commercial writers, filed a class-action lawsuit against Google, and in October 2008, they announced a settlement. Shortly thereafter, Harvard pulled out of the project and in February 2009, a Harvard librarian published an op-ed in the New York Times criticizing it. Google is aware of growing dissent among faculty and has offered special terms pertaining only to the University of Michigan. UCOLASC argues that the settlement should be fair to scholars everywhere. When the settlement details became publicly available, UCOLASC developed concerns. The main issue regards "orphan books" published between 1923 and the present, which are still under copyright, but whose authors either are dead or can not be located. The overwhelming majority of books in UC's libraries are "orphans." The settlement gives Google a license to scan and archive orphan books, pending rights holders' registering with a Book Rights Registry, through which the rights holders can restrict use of their books and receive royalties for authorized uses. As part of the settlement with the Author's Guild, Google must charge for access to the content. As the sole entity with license to the books, Google can set the pricing however it wishes. Libraries, including UC's, will want subscriptions, and will be subject to Google's pricing. UC could be required to buy the content of its own orphan books from Google if it wants to make their full texts available to others in digital form. UCOLASC proposes

adjustments to the settlement to protect all scholars, to decrease the likelihood of monopolistic pricing, and to deal with some privacy issues. Senate Executive Director Martha Winnacker stated that she has been advised that only the University's Counsel can make presentations to the court on behalf of any formal UC entity, including the Senate. Therefore, Academic Council can relay UCOLASC's concerns to the President with the request that he direct University Counsel to communicate these concerns to the court, or faculty members as individuals can submit a letter to the judge.

ACTION: Council endorsed forwarding UCOLASC's letter to the President (1 abstention).

XII. Eligibility Regulations

ISSUE: In February, the Regents approved the Academic Senate's proposal to reform the process for determining eligibility for freshman admissions. Subsequently, the regulations that govern freshman admission were sent for systemwide review.

DISCUSSION: BOARS' Chair Sylvia Hurtado thanked the Academic Senate divisions and committees for carefully reviewing the proposed amendments to the Senate Regulations. She noted that a few campuses asked that the regulations be reviewed systemwide again once they have been revised. A division chair argued that since the Admissions by Exception policy was established by the Regents and that the Senate never formally reviewed or endorsed it, it should not be codified in Senate Regulations. Chair Hurtado reviewed the history of the Admission by Exception policy, and stated that the guidelines for implementing the Admission by Exception policy were endorsed by Council in September 2005, but were not written into the Senate Regulations. She noted that in addition to changing the sections on eligibility, BOARS aimed to eliminate inaccuracies and align the regulations with campus practices.

ACTION: Council unanimously approved forwarding the systemwide comments and recommendations to BOARS for revision.

XIII. UC's Communications Strategy

This item was postponed to the June Council meeting.

XIV. Task Force on UC's Future

This item was postponed to the June Council meeting.

XV. EAP Update

This item was postponed to the June Council meeting.

XVI. UCEP Revised Charge

ISSUE: Given that no systemwide Senate committee is charged to address issues of undergraduate student welfare from a faculty perspective, UCEP requests that its charge be expanded to encompass this topic.

DISCUSSION: Chair Croughan stated that if approved, this item must go for systemwide review in the fall because it would require legislation to change the Bylaws. A division chair noted that at her campus, the Council on Student Experience addresses

issues not covered by the Committee on Educational Policy and asked which committee would be the representative to UCEP. Chair Croughan responded that the divisional Senate would make that decision. A member recommended including a provision to assess UCEP's workload once it expanded its charge. UCEP's chair clarified that the purpose of the revised charge is to enable UCEP to initiate studies of student affairs topics of interest to the committee, which it currently cannot do because it is not in its charge. UCEP does not intend to address all student affairs issues.

ACTION: Council unanimously approved sending UCEP's request to revise their charge for systemwide review.

XVII. UCEP on SR 764 Repeal

ISSUE: UCEP has submitted a proposal to rescind Senate Regulation 764, which limits credit for special study courses for undergraduates to five units per term.

DISCUSSION: Several Council members spoke in favor of the repeal.

ACTION: Council unanimously approved sending UCEP's request to repeal SR 764 for systemwide review.

XVIII. UCORP Concerns about NAGPRA Implementation

ACTION: After a brief discussion, this item was postponed to the June Council meeting.

XIX. New Business

Council did not have time to discuss new business.

Meeting adjourned at 4:30 p.m.

Attest: Mary S. Croughan, Academic Council Chair

Minutes prepared by Clare Sheridan, Senior Policy Analyst