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August 16, 2024

Dear Members of the CUNY Board of Trustees,

I write to update you on developments this summer regarding the controversial proposals from the Office of Academic Affairs (OAA) to change the CUNY Bylaws and Manual of General Policy. On June 3, 2024, the Governance Committee of the Board heard from Provost Wendy Hensel regarding proposed changes. The trustees have also heard from the leadership of the University Faculty Senate, especially Board member John Verzani, regarding the UFS response. If you are asked to approve these proposals, you must vote **no**.

First, a fundamental misrepresentation in the Provost's remarks at the Governance Committee meeting must be corrected about the scope and impact of the proposed changes. Provost Hensel focused her presentation on two aspects of the proposed Bylaw changes—those that buttress OAA's "scheduling optimization" program and a "clarification" of the roles of college Presidents, Provosts and Deans. On June 7, a UFS/Faculty Governance Leaders ad hoc committee provided comprehensive feedback to EVC Hensel on the three recommendation drafts involving Presidents, Provosts, and Deans. Their feedback refutes Provost Hensel's contention that mere "clarification" is the goal of the proposed changes. If functional roles need clarification, they note, then this should be done through campus governance documents, such as administrative organizational charts or local college bylaws, not through the Bylaws of the CUNY system. OAA initially issued a memo, "Strategies for the Optimal Use of Academic Resources," on January 25, 2024, and the PSC refrained from taking a formal position. The guidance in that memo suggested paths to achieve more efficient scheduling *without* altering the Bylaws. But in modifying the roles of administrative leaders, the OAA proposed Bylaw changes dramatically exceed mere issues of scheduling.

Provost Hensel declined to enumerate the other changes that her office proposed, but when viewed in total, they represent precisely the power grab that the Provost has denied. This would be the effect if not the intention. They would, if implemented, shift authority decisively and confound several contractual procedures. Chancellor Matos embraced this "comprehensive" approach to the problem with scheduling. However, as the trustees of CUNY, you must situate the specific matter of course scheduling within the broader, fundamental changes the administration has proposed. These changes are not cosmetic. They represent a disturbing erosion of the significant faculty role in academic leadership and an embrace of the corporate practices that consulting firms have recently urged several universities to adopt - to the detriment of their academic quality and reputation.

Second, the kind of changes that OAA proposed have been determined by previous CUNY leaders and by neutral arbitrators to be the province of labor relations. If only for the sake of a respectful labor-management relationship, consultation with the union would have been appropriate. But it's not just advisable for the administration to consult the

union; the administration must negotiate any such changes with the PSC to fulfill its legal obligations under the State Constitution, the Taylor Law, and the collective bargaining agreement. You should understand what your representatives in the PSC-CUNY contract negotiations heard from us on the same day that Provost Hensel addressed the Board's Governance Committee: the PSC demands to negotiate over the proposed changes to the Bylaws. Several aspects of the collective bargaining agreement are implicated. The administration's refusal to negotiate over them - expressed at the bargaining table on May 15 and again on June 3 - has compelled the PSC to file an improper practice charge with the state Public Employment Relations Board as well as a grievance. The initial PERB conference is scheduled for August 26.

This is not the first time we've been down this road. Neutral arbitrators upheld the PSC's position in a 2011 dispute over the role of Deans in evaluating pre-tenure faculty, for example, and in the settlement agreement CUNY clearly recognized that it had to negotiate the terms of this Decanal review. In the negotiated review process, Department Chairs are placed squarely in the review of the faculty, and CUNY acknowledged further its obligation to negotiate any changes to the relationship between Deans and Department Chairs in the faculty evaluation procedure. Several contractual articles address the central role of the Department Chair and Personnel and Budget committee in procedures on reappointment, promotion, and tenure. The architecture of these procedures is based on the incorporation in 1967 by the Board of Trustees of the Max-Kahn memorandum of 1958. For example, CUNY OAA now proposes to strike from Bylaw 9.3(a) the Department Chair's responsibility to "arrange for careful observation and guidance of the department's instructional staff members." That language has been around for 60 years in fulfillment of the New York State constitutional mandate under Article 5, Section 6. It cannot just be replaced with "scheduling observations" and "providing substantive feedback." Deans cannot be tasked with "the recruitment and evaluation of faculty" when this has historically and contractually been the role of the Department Chairs and Personnel and Budget committees.

Provost Hensel has said "the time has come to formalize the key administrative titles that run through the academic side of our university." She claims a lack of "clear organizational structure between the two academic titles identified by the Bylaws - [department] chairs and presidents." In fact, the organizational structure is clear and well-established through past practice and the collective bargaining agreement. To the extent there is a need to further clarify these roles, that must be done through negotiations with the PSC, as the bargaining and arbitration history demonstrates. To the extent that these changes alter the role and function of the President as an *academic* officer, that is also a modification of the contract. Several contractual articles specifically require that certain final decisions regarding academic matters be determined by the college Presidents as academic officers.

Moreover, Article 2.1 of our contract says the parties "agree to maintain the academic character of the University as an institution of higher education." Changing the role of a college President from *principal academic officer* to *chief executive officer* is an affront to that agreement. It's an insult to our students and a signal to the faculty and staff that the research stature of the university does not matter. This change would not make CUNY more modern, it would make us more corporate.

Provost Hensel described the proposed policies as normative and forward-looking. The union, along with the university's faculty governance leaders, disagree. This should be settled in bargaining. If it does come before your Board, it will be your decision whether to erode or maintain the academic integrity of the City University of New York and the quality of education New Yorkers seek at our colleges.

I urge you to oppose the proposals from OAA. I am available to discuss the matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "J Davis".

James Davis, President  
Professional Staff Congress/CUNY

Cc: Félix V. Matos Rodríguez, Chancellor, City University of New York  
Senator Toby Ann Stavisky, Chair, Committee on Higher Education  
Assembly Member Patricia Fahy, Chair, Committee on Higher Education  
Council Member Eric Dinowitz, Chair, Committee on Higher Education