

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA
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Via E-Mail - george@ucsc.edu

RE: Legal Effect of Resolutions of UCSC Academic Senate

Dear Chancellor Blumenthal:

You have requested my advice concerning the legal effect of certain resolutions recently adopted by the University of California Santa Cruz Division of the Academic Senate ("Senate Division"). This letter responds to your request. Please feel free to share it as you deem appropriate with interested parties, including representatives of the Senate Division.

The resolutions in question were adopted by the Senate Division on October 19, 2009 and read in part as follows:

"Be it resolved: The UCSC Academic Senate, constituting itself as a committee of the whole and asserting its plenary authority over curricular matters resolves that the dates proposed by the SEC in its memo of July 17, 2009 [September 21, November 23, 24 and 25, January 4 and 5, February 12, March 29 and 30, and May 28] be designated as instructional days on which classes do not meet."

"Be it resolved: ... that the Academic Senate of UCSC hereby informs UCOP that the UCSC Academic Senate shall determine when furlough days may be taken by UCSC faculty."

In my view and for the reasons set forth below, the above-referenced resolutions (the "Division Resolutions") are without legal effect.

As an initial matter, the Division Resolutions contradict established authority prescribed by the Regents for setting the academic calendar. Section 100.4(h) of the Regent's Standing Orders provides as follows:

"The President shall fix the calendar of the University, provided that no session of instruction shall be established or abolished except with the advice of the Academic Senate and the approval of the Board."

By its express terms, Standing Order 100.4(h) ultimately vests authority in the President to fix the University's calendar, subject in certain instances to further approval by the Regents. While the Standing Order also provides for advice by the Academic Senate, such "advice" is not binding on the President and does not constitute a proper basis for the Senate Division unilaterally to issue directives contrary to those of the President. In this instance, the dates specified in the Division Resolution already have been fixed in the current year's academic calendar, through a process established by the President and/or his delegates, as instructional days during which classes will be offered. Moreover, the President, through his delegee, the Provost, has directed that these instructional days not be affected by faculty furloughs. Absent some supervening authority, which does not exist here (see further below), the Senate Division is without a proper basis for designating the instructional dates at issue as non-class days.

Moreover, under the above section of the Standing Orders, the Regents retained for themselves the authority to abolish instructional days, once fixed. The proposed action by the Senate Division clearly abolishes one or more "session[s] of instruction" within the meaning of the Standing Order--without the required Regental approval. Such proposed action also brings the total number of instructional days for the academic year below those mandated by the Regents. While the term "instructional" is not defined in the Standing Order, by its plain and ordinary meaning, the term refers to days when students are offered the opportunity to receive faculty teaching and guidance in one form or another, which opportunity cannot and will not be afforded if the faculty is on furlough. Indeed, it appears that such was the intent of the Division Resolutions, as there is evidence that they were adopted as a gesture of protest over the approved furlough program.

Further still, the Division Resolutions contradict authority prescribed by the Regents for implementing the recently-adopted furlough program. Section 100.4(xx)(2) of the Standing Orders provides as follows:

"The President of the University shall have authority to implement furloughs and/or salary reductions, on terms that the President deems necessary, for some or all categories of University employees, upon Declaration of an Emergency, as specified below... The authority provided herein may be exercised with regard to the University as a whole or with regard to any campus or other part of the University system."

Section 100.4(xx)(2) by its express terms thus vests authority in the President to implement furloughs and salary reductions, *on terms he deems necessary*, upon declaration of an Extreme

Financial Emergency. (One such declaration was recently issued by the Regents and became effective September 1. It continues at least through August 31, 2010.) The President, again through his delegee the Provost, has established among other terms that furlough days will not be taken during instructional days when classes previously have been scheduled. The Senate Division is without authority to contradict this term of the President's furlough implementation.

The Senate Division seeks to justify its action based on asserted "plenary authority" over curricular matters. The assertion in my view is without merit. Any authority the Senate Division proposes to exercise on these issues is itself a creature of Regental Standing Orders, and is subject to such terms and limitations as have been placed on it by the Regents. Section 105.1(c) of the Standing Orders provides as follows concerning the duties and powers of the Academic Senate:

"The Academic Senate shall perform such duties as the Board may direct and shall exercise such powers as the Board may confer upon it. It may delegate to its divisions or committees, including several faculties and councils, such authority as is appropriate to the performance of their respective functions."
(Emphasis added)

While it is true that the Academic Senate is afforded general authority to "supervise" all courses and curricula offered through approved University programs (Standing Order 105.2(b)), authority for the specific actions at issue here—establishing instructional days within the academic calendar and implementing the recently-approved furlough program—is addressed elsewhere in the Standing Orders. As noted above, these other provisions vest authority for the actions at issue in the President (and in some instances, in the Regents). Under ordinary rules of statutory construction, these other special provisions operate to limit any general authority that the Senate Division otherwise might claim in order to deviate from the directives of the President or his authorized delegees.

The Senate Division indeed appears to acknowledge such conclusion in its own background materials for the Division Resolutions. In its July 17, 2009 letter to Executive Vice Chancellor Kliger, in which it first proposed that furlough days be taken during instructional days, the Senate Division observed as follows:

"We understand that you will need to request an exception to the standard University of California academic calendar since this reduction will cause UCSC to fall below the minimum of 146 instruction days for the academic year. The President's authority ... to grant this exception is delegated to the Provost and Executive Vice President." (Emphasis added)

The Senate Division seeks to evade the force of the above conclusions by purporting merely to change the designation of the dates at issue—from days when classes are offered to days when

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classes are not offered—rather than to reduce or abolish instructional days altogether. However, as noted above, the effect and apparent purpose of such “designation” is to deprive students of the opportunity to receive teaching and guidance in any form on the dates at issue, and further to abrogate the authority of the President and the Regents to approve any proposed abolition of a session of instruction. This it cannot do, consistent with the governing policies of the University.

For the foregoing reasons, I conclude that the Division Resolutions conflict with the authority delegated to the President by the Regents and accordingly are without legal effect. Please do not hesitate to contact me or Principal Counsel Kathleen Quenneville in this office if you have any questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Charles F. Robinson".

Charles F. Robinson
Vice President and General Counsel