

Title: Resolution to Address Asymmetry of Legal Counsel in Matters of UB Shared Governance

To: The Faculty Senate Executive Committee

From: James Milles, Professor, UB Law School; Faculty Senate Executive Committee Member

Date Proposed: September 6, 2017

First Reading to the Faculty Senate: September 19, 2017

Second Reading to the Faculty Senate:

Approved by the Faculty Senate:

Effective date:

Resolution to Address Asymmetry of Legal Counsel in Matters of UB Shared Governance

WHEREAS, shared governance has been considered “the bedrock of higher education” in the United States for more than 50 years; and

WHEREAS, SUNY Chancellor Nancy Zimpher, Chair of SUNY Trustees H. Carl McCall, SUNY Campus Presidents and UB’s accreditation agency, the Middle States Commission on Higher Education have asserted that shared governance is a priority in higher education; and

WHEREAS, shared governance is a matrixed collaboration of traditionally siloed responsibilities among faculty, professional staff, students, administration, and governing councils; and

WHEREAS, shared governance presupposes that each of the five institutional stakeholders (faculty, professional staff, students, administration and university councils) have a seat, a voice and a vote in broader university matters; and

WHEREAS, shared governance constitutes a delicate balance among faculty, professional staff, students, administration, and governing councils participating in planning and decision-making processes, on the one hand, and administrative accountability and responsibility on the other; and

WHEREAS, in the recent past, especially in the last two academic years (2015-2016 and 2016-2017), UB Administration has increasingly relied on SUNY Counsel’s advice in decision making processes in matters of shared governance, such as determining the status of units as either academic or service, granting faculty members in UB’s Educational Opportunity Center voting faculty status, modifying faculty duties following return to work after FMLA, and

asserting the right of the UB FSEC to take up faculty grievances based on our by-laws and standing orders in relation to the UB Faculty Senate; and

WHEREAS, the SUNY Office of General Counsel clearly recognizes that a conflict of interest prevents the Office of General Counsel from attempting to provide the Faculty Senate with independent legal advice, but that “if the faculty or the faculty senate determines that they wish, or require, access to legal advice or opinions, they are free to retain any legal counsel of their choice.”

WHEREAS, as of today the UB Faculty Senate has no budget for legal counsel to get such advice or opinions; and

WHEREAS, this creates an asymmetric relationship between the faculty and the administration and is a material disadvantage for the faculty in discharging their responsibilities of shared governance.

BE IT RESOLVED that the UB Faculty Senate requests all legal opinions from the SUNY Office of General Counsel in matters of UB Shared Governance be made in writing.

BE IT FURTHER RESOLVED that the UB Faculty Senate requests that when UB administration chooses to use the SUNY Office of General Counsel in matters of UB Shared Governance, the UB Faculty senate be given the opportunity to retain the legal counsel of their choice for legal advice or opinions.

BE IT FURTHER RESOLVED that the UB Faculty Senate’s budget (Faculty Senate Account: 0574) will be adjusted to cover all appropriate legal expenses.

Sent for Promulgation on:

Decision: