

SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY

----- X  
BARBARA BOWEN as President of the  
Professional Staff Congress/CUNY,  
PROFESSIONAL STAFF CONGRESS/CUNY,  
LOCAL 2334, AFT, AFL-CIO, SANDI E.  
COOPER as Chair of the University Faculty  
Senate, and TERRENCE MARTELL as Vice-  
Chair of the University Faculty Senate and  
Chair of the Baruch College Faculty Senate,

Plaintiffs,

-against-

CITY UNIVERSITY OF NEW YORK, and the  
BOARD OF TRUSTEES of the City University  
of New York,

Defendants.  
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**Index No.**

**SUMMONS**

Plaintiff designates New York County as the place for trial. The basis for venue is residence. See CPLR § 503.


**TO THE ABOVE NAMED DEFENDANTS:**

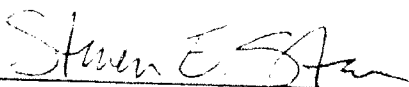
You are hereby summoned and required to serve upon Plaintiffs' attorney an answer to the complaint in this action within twenty (20) days after service of this Summons upon you, exclusive of the day of service, or within thirty (30) days after service is complete if this Summons is not personally delivered to you within the State of New York. In the case of your failure to answer, judgment will be taken against you by default for the relief demanded in the annexed complaint.

Dated: March 20, 2012  
New York, New York

Respectfully submitted,

MEYER, SUOZZI, ENGLISH & KLEIN, P.C.

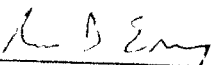
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LOCAL 2332, AFT, AFL-CIO, SANDI E.  
COOPER as Chair of the University Faculty  
Senate, and TERRENCE MARTELL as Vice-  
Chair of the University Faculty Senate

SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY

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PROFESSIONAL STAFF CONGRESS/CUNY, :  
LOCAL 2334, AFT, AFL-CIO, BARBARA :  
BOWEN as President of the Professional Staff :  
Congress/CUNY, SANDI E. COOPER as Chair :  
of the University Faculty Senate, and :  
TERRENCE MARTELL as Vice-Chair of the :  
University Faculty Senate and :  
Chair of the Baruch College Faculty Senate, :  
:

Plaintiffs,

-against-

CITY UNIVERSITY OF NEW YORK, and the :  
BOARD OF TRUSTEES of the City University :  
of New York, :  
:

Defendants, :  
----- X

Index No.

COMPLAINT

Plaintiffs, PROFESSIONAL STAFF CONGRESS/CUNY, LOCAL 2334, AFT, AFL-CIO, BARBARA BOWEN as President of the Professional Staff Congress/CUNY, Local 2334, AFT, AFL-CIO, SANDI E. COOPER as Chair of the University Faculty Senate, and TERRENCE MARTELL, as Vice-Chair of the University Faculty Senate and as Chair of the Baruch College Faculty Senate, (collectively, "Plaintiffs") by their attorneys, Meyer, Suozzi, English & Klein, P.C., and Emery Celli Brinkerhoff & Abady, LLP as and for their Complaint, allege as follows:

### PRELIMINARY STATEMENT

1. Plaintiffs bring this action because defendants have breached their obligations under a November 1997 settlement agreement (the "Settlement Agreement") between the defendants' and plaintiffs' predecessors. The Settlement

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Agreement resolved a case then pending before the New York State Court of Appeals. It required the City University of New York ("CUNY") and the CUNY Board of Trustees (the "CUNY Board") to adopt a resolution recognizing and reaffirming that CUNY's faculty, through the University Faculty Senate and college faculty senates and councils, (collectively "Faculty") would be responsible for "the formulation of policy relating to the admission and retention of students including health and scholarship standards. . . . curriculum, awarding of college credit, and granting of degrees . . . ." On June 27, 2011, in violation of the Settlement Agreement, the CUNY Board passed a Resolution ("2011 Resolution") which formulated policy regarding these and other matters without properly including the Faculty in the resolution process and without the Faculty's first formulating the policy on those matters for consideration by the CUNY Board or its committees, as required by the Settlement Agreement. By excluding the Faculty from the process of formulating the 2011 Resolution, CUNY and the CUNY Board breached the Settlement Agreement.

### **PARTIES**

2. The Professional Staff Congress/CUNY, Local 2334, AFT, AFL-CIO ("PSC") is a labor union with a principal place of business at 61 Broadway, New York, New York 10006. It is the certified bargaining representative of CUNY's faculty and professional staff.

3. Barbara Bowen is the democratically elected President of the PSC.

4. The University Faculty Senate ("Faculty Senate") is the democratically elected Faculty governance body in academic matters of university-wide concern at CUNY. The Faculty Senate is comprised of approximately 120 Senators

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representing CUNY's approximately 19,000 full- and part-time faculty, and it provides a representative, collective faculty voice from each of CUNY's 21 campuses. The Faculty Senate, which is established pursuant to Section 8.13 of the CUNY Bylaws, is "responsible, subject to the [CUNY] board, for the formulation of policy relating to the academic status, role, rights, and freedoms of the faculty, university level educational and instructional matters, and research and scholarship activities of university-wide import." Members of the Faculty Senate's Executive Committee serve as voting members of the CUNY Board's committees.

5. The Senators serving on the Faculty Senate are democratically elected by CUNY's faculty.

6. Sandi E. Cooper is the Chair of the Faculty Senate, and an *ex officio* CUNY Trustee.

7. Terrence Martell is the Vice-Chair of the Faculty Senate and the Chair of the Baruch College Faculty Senate.

8. CUNY is a public university with eleven senior colleges, six community colleges, a law school, a School of Professional Studies, a Graduate Center, and a school of journalism. It has a principal place of business at 535 East 80<sup>th</sup> Street, New York, NY 10075. It is established pursuant to Article 125 of the New York Education Law Sections 6201 *et seq.*

9. The CUNY Board is CUNY's governing body. CUNY operates pursuant to Bylaws.

10. Each college within CUNY has its own faculty or academic council

or senate ("College Senates") which, pursuant to CUNY Bylaw §§ 8.6 and 8.7, is responsible for, among other things, "the formulation of policy relating to the admission and retention of students including health and scholarship standards therefor, student attendance including leaves of absence, curriculum, awarding of college credit, granting of degrees. It shall . . . conduct the educational affairs customarily cared for by a college faculty." College Senates "shall be the primary body responsible for formulating policy on academic matters."

11. Baruch College is a senior college within CUNY.

12. At Baruch College, the Baruch College Faculty Senate, chaired by Martell, is responsible for the duties set forth in Paragraph 10.

#### **JURISDICTION AND VENUE**

13. This Court has jurisdiction over CUNY pursuant to CPLR § 301.

14. Venue is proper in New York County pursuant to CPLR § 503(a).

#### **FACTUAL BACKGROUND**

##### **A. The 1995 CUNY Resolution**

15. On or about June 26, 1995, the CUNY Board adopted a Resolution of the Committee on Long Range Planning ("1995 Resolution"). Item Number 27 of the 1995 Resolution ("LRP 27") changed the number of credits required to obtain a CUNY degree and provided for a mechanism for CUNY's constituent colleges to obtain waivers from those credit requirements.

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B. The 1995 Lawsuit

16. In August 1995, Irwin Polishook, in his capacity as President of the PSC, Sandi Cooper, in her capacity as Chair of the University Faculty Senate, and others commenced an Article 78 action in New York State Supreme Court in New York County, against CUNY, the CUNY Board, and others, to challenge the 1995 Resolution.

17. On or about April 30, 1996, Supreme Court, New York County vacated the 1995 Resolution, LRP 27, and remanded the matter to the CUNY Board.

18. The Supreme Court's 1996 decision was appealed, and on or about December 19, 1996 the Appellate Division, First Department, affirmed the vacatur of LRP 27, finding that LRP 27 lacked a rational basis, but otherwise reversed the decision of the Supreme Court. Polishook v. City University of New York, 234 A.D. 2d 165 (1st Dep't 1996).

19. The Appellate Division's decision was appealed to the Court of Appeals. In November 1997, while that appeal was pending, the parties entered into the Settlement Agreement. A copy of the Settlement Agreement is attached as Exhibit A.

C. The Settlement Agreement

20. The Settlement Agreement was contingent upon the CUNY Board's approving a resolution recognizing and reaffirming, among other things, that CUNY's faculty, through the Faculty Senate and College Senates, would remain responsible for "the formulation of policy relating to the admission and retention of students including health and scholarship standards...curriculum, awarding of college credit, and granting

of degrees. . . .,” and recognizing and reaffirming CUNY Bylaw § 8.6 (Duties of Faculty) and §8.13 (University Faculty Senate).

21. On or about November 24, 1997, the CUNY Board passed the resolution required by the Settlement Agreement (“1997 Resolution”).

22. As consideration for the Settlement Agreement, the CUNY Board passed the 1997 Resolution, the Polishook litigation petitioners and respondents withdrew their appeals with prejudice and without costs or fees to any party, and the Polishook petitioners agreed not to bring any legal or other proceeding to challenge the 1997 Resolution.

23. Since its passage more than 14 years ago, CUNY and the CUNY Board have acted in substantial accordance with the 1997 Resolution.

24. Since its passage more than 14 years ago, CUNY and the CUNY Board have not amended CUNY Bylaws §§ 8.6 and 8.13, or the 1997 Resolution. (In November 2011, CUNY By-Law §8.6 was renumbered §8.5, and §8.13 was renumbered §8.10. For the sake of consistency, this Complaint will refer to CUNY By-Law §§ 8.6 and 8.13 by their pre-November 2011 designations.)

#### D. SHARED GOVERNANCE AT CUNY

25. The Settlement Agreement, the 1997 Resolution, and CUNY Bylaws §§ 8.6 and 8.13 codify academic freedom and shared governance between CUNY's administrators and faculty.

26. Shared governance is a well-established academic principle in higher education. It is defined in a joint statement issued by the American Association



of University Professors ("AAUP"), the American Council on Education ("ACE"), and the Association of Governing Boards of Universities and Colleges ("AGBUC"), which states in part:

The faculty has primary responsibility for such fundamental areas as curriculum, subject matter and methods of instruction, research, faculty status, and those aspects of student life which relate to the educational process. On these matters the power of review or final decision lodged in the governing board or delegated by it to the president should be exercised adversely only in exceptional circumstances, and for reasons communicated to the faculty. It is desirable that the faculty should, following such communication, have opportunity for further consideration and further transmittal of its views to the president or board....

The faculty sets the requirements for the degrees offered in course, determines when the requirements have been met, and authorizes the president and board to grant the degrees thus achieved....

27. The AAUP statement "On the Relationship of Faculty Governance to Academic Freedom" further provides that:

... Since the faculty has primary responsibility for the teaching and research done in the institution, the faculty's voice on matters having to do with teaching and research should be given the greatest weight. From that idea flow more specific principles regarding the faculty's role.... Since such decisions as those involving choice of method of instruction, subject matter to be taught, policies for admitting students, standards of student competence in a discipline, the maintenance of a suitable environment for learning, and standards of faculty competence bear directly on the teaching and research conducted in the institution, the faculty should have primary authority over decisions about such matters – that is, the administration should "concur with the faculty judgment except in rare instances and for compelling reasons which should be stated in detail." [quoting the AAUP's 1966 Statement on Government of Colleges and Universities]

28. CUNY Bylaw § 8.6 codifies the concept of shared governance at

CUNY:

The faculty shall meet at least once in each semester, or oftener, upon call by the president, or by petition of ten per cent of its members. The faculty shall be responsible, subject to guidelines, if any, as established by the board, for the formulation of policy relating to the admission and retention of students including health and scholarship standards therefor, student attendance including leaves of absence, curriculum, awarding of college credit, granting of degrees. It shall make its own bylaws, consistent with these bylaws, and conduct the educational affairs customarily cared for by a college faculty. The president shall preside at its meetings, or in his/her absence, the dean of faculty or a dean designated by the president.

A copy of CUNY Bylaw § 8.6 is attached as Exhibit B.

29. CUNY Bylaw § 8.13 further codifies the concept of shared

governance at CUNY:

There shall be a university faculty senate, responsible, subject to the board, for the formulation of policy relating to the academic status, role, rights, and freedoms of the faculty, university level educational and instructional matters, and research and scholarly activities of university-wide import. . . .

A copy of CUNY Bylaw § 8.13 is attached as Exhibit C.

30. The 1997 Resolution passed by the CUNY Board pursuant to the

Settlement Agreement recognizes and reaffirms the principle of shared governance at

CUNY. It provides:

RESOLVED, that the Board, in the exercise of its authority to govern and administer the University pursuant to N.Y. Education Law § 6204[1], in connection with the Board's making educational policy, recognizes and reaffirms that the faculty, in accordance with CUNY Bylaws § 8.6, shall be responsible, subject to guidelines, if any, as established by

the Board, for the formulation of policy relating to the admission and retention of students including health and scholarship standards therefor, student attendance including leaves of absence, curriculum, awarding of college credit, and granting of degrees; that this responsibility is to be exercised through the college faculty senates pursuant to Board Bylaws or college governance plans approved by the Board, or the University Faculty Senate in accordance with CUNY Bylaws § 8.13, which states: "There shall be a university faculty senate, responsible, subject to the board, for the formulation of policy relating to the academic status, role, rights, and freedoms of the faculty, university level educational and instructional matters, and research and scholarly activities of university-wide import. The powers and duties of the university faculty senate shall not extend to areas or interests which fall exclusively within the domain of the faculty councils of the constituent units of the university"; and that such policies will then be considered by the Board or its appropriate committees in making policy decisions relating to educational matters.

E. 2011 – CUNY Violates the Settlement Agreement

31. Pursuant to the 1997 Resolution and CUNY Bylaws §§ 8.6 and 8.13, the faculty, through the Faculty Senate and College Senates, "shall be responsible" for the formulation of academic policy, subject to guidelines, if any, set by the CUNY Board.

32. Pursuant to the 1997 Resolution and CUNY Bylaws §§ 8.6 and 8.13, once the Faculty Senate or the College Senates formulate policy, "such policies will then be considered by the Board or its appropriate committees in making policy decisions relating to educational matters."

33. The Settlement Agreement and the 1997 Resolution require that the CUNY Board and its committees consider policy formulated by the Faculty.

34. The Settlement Agreement and the 1997 Resolution do not permit

the CUNY Board to formulate its own policy on educational issues, including those "relating to the admission and retention of students including health and scholarship standards therefor, student attendance including leaves of absence, curriculum, awarding of college credit, granting of degrees" and those "relating to the academic status, role, rights, and freedoms of the faculty, university level educational and instructional matters, and research and scholarly activities of university-wide import." Instead, they require that educational policy be formulated by the College Senates and Faculty Senate for consideration by the CUNY Board or its committees.

35. On or about June 27, 2011, the CUNY Board passed the 2011 Resolution that, among other things, changed (a) the courses that would be required to obtain a CUNY degree, (b) the ability of students to transfer credits among CUNY's institutions, and (c) the ability of CUNY's institutions to accept or reject transferred credits from other CUNY institutions as course prerequisites. The 2011 Resolution was passed without the Faculty's formulating policy, and without properly including the Faculty in the process. It was thus passed in violation of the Settlement Agreement and the Bylaws.

36. The 2011 Resolution, sometimes referred to as "Pathways," also created a task force charged with developing credit requirements, course requirements, degree requirements, and other responsibilities.

37. On or about November 1, 2011, as required by the 2011 Resolution, the task force released a report proposing a structure for a thirty-credit general education program to apply to all CUNY campuses. This structure identified the educational disciplines that would make up the general education program, defined the

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learning outcomes for each discipline, and determined the number of credits to be allocated to each discipline.

38. On or about November 1, 2011, the task force invited comments from only the Presidents of CUNY's constituent colleges, due by November 15, 2011.

39. Opposition to the task force's plan was broad-based and included faculty, student organizations, and college Presidents.

40. The following excerpts highlight the wide-ranging opposition to the task force's recommendation:

College of Staten Island

-The coordinated comments to the task force from the College of Staten Island ("CSI") began as follows: "We transmit to you the College of Staten Island response to the Pathways draft of November 1, 2011, passed by the CSI Faculty Senate on November 10, 2011. In view of the overwhelming rejection of the Pathways Initiative by the CSI faculty and students...and the massive opposition to this program at our sister colleges, it is clear that the Board of Trustees should immediately withdraw the Pathways Resolution and find a more reasonable and educationally sound means of addressing issues of transfer."

-The CSI comments to the task force add that there was "widespread agreement that Pathways (1) lowers educational standards at CUNY, severely damaging its reputation for academic

excellence; (2) violates legally defined and traditional prerogatives of faculty to determine curriculum; and (3) departs from recognized norms of academic freedom, exposing CUNY to national condemnation."

-The CSI comments included a resolution by the CSI Student Government Association that the "proposed curriculum limits the knowledge and skill level expected of students and does not reflect the high standards for education, which the institutions of CUNY strive to provide."

#### John Jay College of Criminal Justice

-The College Senate of John Jay College of Criminal Justice ("John Jay") passed a resolution stating: "We acknowledge the merits of facilitating student transfers within CUNY, but this can be accomplished without the imposition of a new curriculum. The faculty of a college should determine the content of its general education curriculum. We reject Pathways because it disrespects and bypasses faculty governance and also on the grounds that it lacks sufficient depth and breadth to provide our students with a quality liberal arts education . . . ." The College Senate added, among other things, that the "Pathways proposal undermines John Jay's five-year, CUNY-mandated process of revising our general education curriculum."

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-The President of John Jay, Jeremy Travis, provided a similar assessment to that of the College Senate, writing in his comments to the task force that the "Pathways proposal undermines John Jay's five-year, consultative, faculty-led process of revising our General Education curriculum, culminating in a vote by our College Council at the end of Spring 2011 to endorse an outcomes-based, scaffolded, curricular structure, which unifies the broad disciplines of the liberal arts under the theme of educating for justice and gives a unique identity to a John Jay education." President Travis added that the proposal "will likely engender faculty resistance rather than the support and buy-in our own approved program enjoys" and that the "process ignored the role of the local campus faculty in setting the college's curriculum."

-A Professor in John Jay's English Department, touching on a common theme, commented to the task force that a "restrictive, centrally mandated general education curriculum is not an appropriate solution for transfer problems within CUNY. The solution needs to be administrative." The professor added, reflecting another common theme, that the credit and course requirements developed by the task force were "woefully inadequate" and "will 'brand' the entire university as third rate."

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### Baruch College

-The Baruch College Faculty Senate's Executive Committee unanimously approved a statement opposing the task force's proposal on multiple grounds, including the number of credits allocated as "insufficient to establish a COMMON Baruch College experience", and the "very real prospect that different students in the same major having significant differences in preparation without significant differences in GPA" leading to "confusion in the market place" which could "undermine Baruch's reputation for quality."

### Queensborough Community College

-The Queensborough Community College ("QCC") Academic Senate passed a resolution which stated that the process by which the CUNY Board implemented Pathways "stands in direct violation of the Academic Freedom Rights of the faculties, students, and administrators of the individual colleges of CUNY to make their own academic judgments to establish their own degree requirements," that aspects of Pathways "will result in a lowering of academic standards in General Education courses," and that the Pathways "curricular changes are harmful to the academic reputation of [QCC] and [CUNY], the careers of our graduates and faculty, and to shared governance and academic freedom."



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### Borough of Manhattan Community College

-The Science Department of the Borough of Manhattan Community College unanimously passed a resolution stating that Pathways, if implemented, would require them to “eviscerate our courses by eliminating content,” and that it would not, as required by Pathways, redesign its non-major courses to be 3-hour, 3-credit courses.

### Hunter College

-The Hunter College General Education Committee noted that the plan “seriously erodes the quality of the Hunter College degree” and that “Hunter College has recently redesigned and reviewed its general education curriculum...with the help of a prestigious Mellon award and to the acclaim of the American Council of Trustees and Alumni, to provide its graduates with an outstanding general education that combines breadth and depth,” and proposed a resolution rejecting the plan.

### New York City College of Technology

-The Chair of the Mathematics Department of the New York City College of Technology transmitted a statement to the task force rejecting the proposal, explaining that “the common general education core as described . . . would greatly weaken the academic value of our career and professional programs . . . . The proposal would seem to require us to accept a random selection of general education courses as counting towards the degree, rather

than ones which would strengthen the students' employment prospects. There is also the danger that students will shop around for the easiest courses...undermining the goal of strengthening education."

41. On or about December 1, 2011, the task force issued its final recommendation to the Chancellor.

42. The task force's final recommendation varied only slightly from its original proposal, did not reasonably account for the overwhelming criticism from the colleges, faculty, and students, and disregarded the majority of the most critical comments and objections as beyond its jurisdiction.

43. On or about December 12, 2011, the Chancellor adopted the task force's final recommendation.

44. CUNY Bylaw § 8.6, which was reaffirmed by the Settlement Agreement, provides that the "faculty shall be responsible...for the formulation of policy..." regarding student admission, scholarship standards, curriculum, college credit, and other matters. The 2011 Resolution violates the Settlement Agreement and the 1997 Resolution because it was not based upon policy formulated by the Faculty.

45. The 2011 Resolution violates the Settlement Agreement and the 1997 Resolution because it was not based on or preceded by policy formulated by the Faculty.

46. The 2011 Resolution violates the Settlement Agreement and the 1997 Resolution because it was crafted, considered, and passed without the benefit of

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policy formulated by the Faculty.

47. The 2011 Resolution violates the Settlement Agreement by changing the course and credit requirements for obtaining a degree from CUNY without properly including the Faculty in the process.

48. The 2011 Resolution violates the Settlement Agreement by changing the requirements for the transfer of credits among CUNY's institutions without properly including the Faculty in the process.

49. The 2011 Resolution violates the Settlement Agreement by establishing a task force to perform duties that are the responsibility of the Faculty Senate, such as the development of a general education framework applicable to all CUNY institutions, the definition of learning outcomes, identification of the number of credits to be allocated to each subject area, and the making of recommendations for specific associate and baccalaureate degree programs.

50. The facts set forth in Paragraph 49 violate the Settlement Agreement because those responsibilities given to the task force properly belong to the Faculty pursuant to the Settlement Agreement and CUNY Bylaw § 8.6, which makes the Faculty responsible for, among other things, the formulation of policy relating to the admission of students, curriculum, awarding of college credit, and the granting of degrees.

51. The CUNY Board's failure to properly include the Faculty in the development and implementation of the 2011 Resolution violates the Settlement Agreement because changes in policy on credit and degree requirements and the

transfer of credits are academic and educational in nature, and the development of such policy is the responsibility of the faculty, through the Faculty Senate and College Senates.

AS AND FOR A FIRST CAUSE OF ACTION

52. The Plaintiffs repeat and reallege each allegation contained in the foregoing paragraphs as though fully set forth herein.

53. Defendants' passage and implementation of the 2011 Resolution was a breach of the Settlement Agreement.

54. Defendants' passage of a resolution inconsistent with the 1997 Resolution was a breach of the Settlement Agreement.

55. Defendants' passage of a resolution that fails to recognize, is inconsistent with and undermines the role of the Faculty, Faculty Senate and College Senates was a breach of the Settlement Agreement.

56. Defendants' approval and implementation of the task force's proposal to the Chancellor was a breach of the Settlement Agreement.

57. As a result of the foregoing, the 2011 Resolution must be vacated.

AS AND FOR A SECOND CAUSE OF ACTION

58. The Plaintiffs repeat and reallege each allegation contained in the foregoing paragraphs as though fully set forth herein.

59. Under the Settlement Agreement, CUNY made a contractual commitment to adhere to CUNY Bylaws §§ 8.6 and 8.13.

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60. Under CUNY Bylaw § 8.13, the Faculty is “responsible, subject to the [CUNY] Board, for the formulation of policy related to the academic status, role, rights and freedoms of the faculty, university level educational and instructional matters, and research and scholarly activities of university-wide import.”

61. Under CUNY Bylaw § 8.6, the Faculty is “responsible, subject to guidelines, if any, as established by the [CUNY] Board, for the formulation of policy relating to the admission and retention of students including health and scholarship standards therefor, student attendance including leaves of absence, curriculum, awarding of college credit, and granting of degrees.”

62. Defendants’ passage and implementation of the 2011 Resolution was inconsistent with CUNY Bylaws §§ 8.6 and 8.13.

63. Because in the Settlement Agreement the defendants agreed to comply with Bylaws §§ 8.6 and 8.13, and because the passage and implementation of the 2011 Resolution was inconsistent with §§ 8.6 and 8.13, the passage of the 2011 Resolution was a breach of contract by defendants.

64. As a result of the foregoing, the 2011 Resolution must be vacated.

WHEREFORE, the Plaintiffs respectfully request that they be awarded judgment against the Defendants as follows:

(a) An order vacating the 2011 Resolution;

(b) A permanent injunction barring CUNY from implementing the 2011 Resolution;

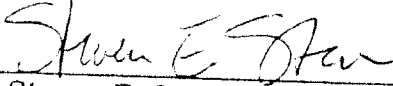
(c) An order awarding the Plaintiffs such other and further relief as is just,  
proper and equitable.

Dated: March 20, 2012  
New York, New York

Respectfully submitted,

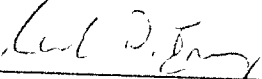
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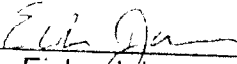
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SANDI E. COOPER as Chair of the University Faculty  
Senate, and TERRENCE MARTELL as Vice-Chair of  
the University Faculty Senate

**FILED: NEW YORK COUNTY CLERK - PENDING**

NYSCEF DOC. NO. 2

INDEX NO. UNASSIGNED

RECEIVED NYSCEF: 03/20/2012

# EXHIBIT A

COURT OF APPEALS  
STATE OF NEW YORK

1997 NOV 24 11:10:42

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In the Matter of the Application of

IRWIN POLISHOOK, as President of the  
Professional Staff Congress, et al.

Petitioners-Respondents,

JOHN MOYIBI AMODA, et al.

New York County  
Clerk's Index No. 119332/95

Intervenors-Respondents,

For a Judgment Pursuant to Article 78  
of the Civil Practice Law and Rules,

- against -

THE CITY UNIVERSITY OF NEW YORK, et al.

Respondents-Appellants  
-----X

SETTLEMENT AGREEMENT

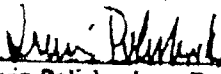
1. At its meeting scheduled for November 24, 1997, the City University of New York Board of Trustees (the "Board") will consider the attached Resolution (the "Resolution"). If the Board fails to approve the Resolution at the November 24, 1997 meeting, this Agreement shall be null and void and of no further effect.

2. If the Board approves the Resolution at its November 24, 1997 meeting, the Respondent will promptly notify the Court of Appeals and take all necessary and appropriate actions to withdraw and discontinue the appeal as follows: the Parties to this Agreement will execute a Stipulation of Withdrawal of the appeal in accordance with Rule 500.16 of the Court's Rules of Practice; if Intervenors-Respondents execute the Stipulation, then Respondents will file it with the Court; if Intervenors-Respondents fail or refuse to sign such Stipulation, then Petitioners and Respondents will jointly move the Court to dismiss the appeal. Petitioners agree that they will not bring any legal action or proceeding to challenge the Resolution. Petitioners and Respondents agree that there shall be no costs or fees against any party.

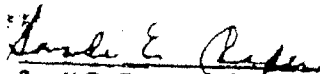


3. The Petitioners acknowledge that the automatic stay of the Appellate Division's December 19, 1996 decision remains in effect until a decision is reached by the Court of Appeals or the appeal is withdrawn, whichever occurs first.


Dated: November 21, 1997

  
Irwin Polishook, as President of the Professional Staff Congress

Dated: November 24, 1997

  
Sandi E. Cooper, as Chair of the University Faculty Senate, and on behalf of all other Petitioners

Dated: November 24, 1997

  
Laurence F. Mucciolo, Deputy Chancellor  
For all Respondents

POLICY ON UNIVERSITY DEGREE REQUIREMENTS

WHEREAS, on June 26, 1995 the Board of Trustees adopted a "Resolution of the Committee on Long Range Planning," by which the Board enacted the proposals contained in the document titled "University Budget Planning and Policy Options"; and

WHEREAS, item 27 of the above Long Range Planning Resolution ("LRP 27") provided as follows:

It shall be University policy that, effective September 1, 1996, all bachelor's degree programs will require a maximum of 120 credits for graduation; all associate degree programs will require a maximum of 60 credits. Colleges may be granted waivers from the Office of Academic Affairs for undergraduate degree programs that require additional credits for certification or accreditation from outside professional organizations or for other compelling educational reasons. This policy brings CUNY into conformity with national practices and reduces the cost of tuition by up to \$1,080; and

WHEREAS, in August 1995, Irwin Polishook, as President of the Professional Staff Congress, and others, commenced a legal action against the University pursuant to Article 78 of the New York Civil Practice Law and Rules, styled Polishook, et al. v. The City University of New York, et al., N.Y. County Clerk's Index No. 95/119332 (the "petition" or the "Polishook litigation"), seeking, among other things, to vacate LRP 27; and

WHEREAS, the New York State Supreme Court, New York County, issued an Order and Judgment on April 30, 1996 that

vacated the Board's June 26, 1995 resolutions that had been challenged in the Petition, including LRP 27, and remanded the matter to the Board; and

WHEREAS, the University appealed the Supreme Court's decision to the Appellate Division, First Department; and

WHEREAS, the Appellate Division issued a decision on December 19, 1996 that reversed the Supreme Court's Order and Judgment and denied the Petition in all respects, except with respect to LRP 27, which the Court vacated on the ground that it did not "perceive a rational basis for Long Term Initiative 27"; and

WHEREAS, the University appealed the Appellate Division's decision to the New York State Court of Appeals, thereby staying the Appellate Division's decision; and

WHEREAS, the parties to the Polishook litigation wish to resolve the matter without further legal action, for the benefit of the students, the faculty, and the University as a whole; and

WHEREAS, the Board originally adopted LRP 27 on June 26, 1995 after a period of internal review, on the grounds that: the University-wide degree requirement of 120 credits for the bachelor's degree and 60 credits for the associate degree would be consistent with national norms; campuses would be better able

to target their limited resources; and students would benefit because of changing student financial aid eligibility; and

WHEREAS, LRP 27 states that "Colleges may be granted waivers from the Office of Academic Affairs for undergraduate degree programs that require additional credits for certification or accreditation from outside professional organizations or for other compelling educational reasons," and that such waivers were granted under this procedure; and

WHEREAS, the Board acknowledges that: "compelling educational reasons" means, for these purposes, strengthening and enhancing the specific academic objectives of a program and meeting the educational needs of enrolled students; the waiver standard of compelling educational reasons shall take into account the specific needs of degree programs or the college's general degree requirements; each college faculty senate is encouraged to review current degree requirements where it appears that those requirements are not meeting a program's academic mission or students' needs, and, where appropriate, to submit recommendations that meet the criteria described above to the Office of Academic Affairs; any changes in degree requirements should be implemented to take account of the reasonable expectations of currently enrolled students who have relied on current requirements in planning their education and fulfilling graduation requirements; and the educational interests of students are paramount in this regard; and

WHEREAS, the University has agreed to withdraw and discontinue its appeal of the Appellate Division's December 19, 1996 Decision and Order to the extent it vacated LRP 27; and

WHEREAS, Petitioners have reviewed and support this Resolution and agree that this Resolution now has a rational foundation, based on the waiver process that will take place under the standards described above; and further agree that they will not bring any legal action or proceeding to challenge this Resolution; now, therefore, be it

RESOLVED, that the Board reaffirms that it is and shall remain University policy that all bachelor's degree programs require a maximum of 120 credits for graduation, and all associate degree programs require a maximum of 60 credits. Colleges may continue to be granted waivers from the Office of Academic Affairs for undergraduate degree programs that require additional credits for certification or accreditation from outside professional organizations or for other compelling educational reasons, as explained above; and be it further

RESOLVED, that the Board, in the exercise of its authority to govern and administer the University pursuant to N.Y. Education Law § 6204(1), in connection with the Board's making educational policy, recognizes and reaffirms that the faculty, in accordance with CUNY Bylaws § 8.6, shall be responsible, subject to guidelines, if any, as established by the Board, for the formulation of policy relating to the admission and retention of students including health and scholarship

standards therefor, student attendance including leaves of absence, curriculum, awarding of college credit, and granting of degrees; that this responsibility is to be exercised through the college faculty senates pursuant to Board Bylaws or college governance plans approved by the Board, or the University Faculty Senate in accordance with CUNY Bylaws § 8.13, which states: "There shall be a university faculty senate, responsible, subject to the board, for the formulation of policy relating to the academic status, role, rights, and freedoms of the faculty, university level educational and instructional matters, and research and scholarly activities of university-wide import. The powers and duties of the university faculty senate shall not extend to areas or interests which fall exclusively within the domain of the faculty councils of the constituent units of the university"; and that such policies will then be considered by the Board or its appropriate committees in making policy decisions relating to educational matters.

# EXHIBIT B

## **Board of Trustees Bylaws**

### **SECTION 8.5. DUTIES OF FACULTY.**

The faculty shall meet at least once in each semester, or oftener, upon call by the president or by petition of ten per cent of its members. The faculty shall be responsible, subject to guidelines, if any, as established by the board, for the formulation of policy relating to the admission and retention of students including health and scholarship standards therefor, student attendance including leaves of absence, curriculum, awarding of college credit, granting of degrees. It shall make its own bylaws, consistent with these bylaws, and conduct the educational affairs customarily cared for by a college faculty. The president shall preside at its meetings, or in his/her absence, the dean of faculty or a dean designated by the president.



**FILED: NEW YORK COUNTY CLERK - PENDING**

NYSCEF DOC. NO. 4

INDEX NO. UNASSIGNED

RECEIVED NYSCEF: 03/20/2012

# EXHIBIT C

# Board of Trustees Bylaws

## SECTION 8.10. UNIVERSITY FACULTY SENATE.

There shall be a university faculty senate, responsible, subject to the board, for the formulation of policy relating to the academic status, role, rights, and freedoms of the faculty, university level educational and instructional matters, and research and scholarly activities of university-wide import. The powers and duties of the university faculty senate shall not extend to areas or interests which fall exclusively within the domain of the faculty councils of the constituent units of the university. Consistent with the powers of the board in accordance with the education law and the bylaws of the board, the university faculty senate shall make its own bylaws providing for the election of its own officers, the establishment of its own rules and procedures for the election of senators, for its internal administration and for such other matters as is necessary for its continuing operations.