

## **AGENDA**

### **COMMITTEE OF THE WHOLE**

**Meeting: 1:15 p.m. Tuesday, March 24, 2009**  
**Glenn S. Dumke Auditorium**

Jeffrey L. Bleich, Chair  
Herbert L. Carter, Vice Chair  
Roberta Achtenberg  
Carol R. Chandler  
Debra S. Farar  
Kenneth Fong  
Margaret Fortune  
George G. Gowgani  
Melinda Guzman  
Curtis Grima  
William Hauck  
Raymond W. Holdsworth  
A. Robert Linscheid  
Peter G. Mehas  
Henry Mendoza  
Lou Monville  
Charles B. Reed, Chancellor  
Craig R. Smith  
Russel Statham  
Glen O. Toney  
Kyriakos Tsakopoulos

#### **Consent Items**

Approval of Minutes of Meeting of November 18, 2008

#### **Discussion Items**

1. General Counsel's Report, *Information*

**MINUTES OF THE MEETING OF  
COMMITTEE OF THE WHOLE**

**Trustees of The California State University  
Glenn S. Dumke Conference Center  
401 Golden Shore  
Long Beach, California**

**November 18, 2008**

**Members Present**

Jeffrey L. Bleich, Chair  
Herbert L. Carter, Vice Chair  
Carol R. Chandler  
Debra S. Farar  
Kenneth Fong  
Margaret Fortune  
George G. Gowgani  
Curtis Grima  
William Hauck  
Raymond W. Holdsworth  
A. Robert Linscheid  
Lou Monville  
Charles B. Reed, Chancellor  
Craig R. Smith  
Russel Statham  
Glen O. Toney

**Consent Item**

The minutes of September 17, 2008 were approved by consent as submitted.

**Accountability Plan for *Access to Excellence***

Chair Bleich introduced the item and explained how this action item properly implements the great work started by his predecessor Roberta Achtenberg. Then, Gary Reichard, vice chancellor and chief academic officer and Paul Zingg, president California State University, Chico presented, for the Board's approval, the Accountability Plan for the new strategic plan for the CSU: *Access to Excellence*, which was adopted by the Board in May 2008. A media presentation, containing an overview of the proposed plan, accompanied the presentation.

Dr. Reichard explained the development of the Accountability Plan, including work by teams of faculty and administrators, beginning with identification of sources and analyses

for indicators and metrics that would be appropriate to measure progress towards the eight CSU commitments in the new strategic plan.

In addition, Dr. Reichard recognized and thanked the statewide Academic Senate for their continued work and formulation of the goals of the Accountability Plan.

It was noted that a president's advisory group, chaired by Paul Zingg, included six other presidents who reviewed and approved the plan. The Executive Council, as a whole, also approved the plan. The timetable for development of the plan was reviewed by the Committee of the Whole. In summary, the accountability plan includes three sections: 1) Range of system-level actions needed to support the twenty-three CSU in achieving the goals laid out in *Access to Excellence*, 2) Indicators with metrics upon which the projected regular reports to the Board of Trustees will be based, and 3) An array of suggested institutional-level actions necessary to achieve the goals in the plan.

The rationale for this three-part structure of the accountability plan is to reflect the balance of system- and institution-level responsibilities if the broad purposes of *Access to Excellence* are to be achieved. Executive Vice Chancellor Reichard noted that the Plan requires strong system-level commitment to the goals that the plan embraces, while recognizing that most of the work outlined in the strategic plan must necessarily be carried out by faculty, staff, administration, and students at the twenty-three universities that comprise the CSU. Dr. Reichard clarified that the institution-level actions outlined in Section 3 of the Accountability Plan are suggested, not required.

In conclusion, Dr. Reichard explained how the three sections of the Accountability Plan provide a roadmap for the system and its individual universities to move purposefully forward toward fulfillment of the CSU's commitments in *Access to Excellence*, and to work to provide accountability to the Board of Trustees and the broader public for progress in that regard in the years ahead.

The committee unanimously recommended approval by the board of the proposed resolution to approve the Accountability Plan for *Access to Excellence* (RCOW 11-08-02).

Chair Bleich adjourned the meeting.

## **COMMITTEE OF THE WHOLE**

### **General Counsel's Report**

#### **Presentation By**

Christine Helwick  
General Counsel

#### **Litigation Report**

This is the semi-annual report on the status of significant litigation confronting the CSU, and is presented for information. "Significant" for purposes of this report is defined as litigation: (1) with the potential for a systemwide impact on the CSU; (2) that raises significant public policy issues; (3) brought by or against another public agency; or (4) which, for other reasons, has a high profile or is likely to generate widespread publicity. *New information since the date of the last report is printed in italics.*

The cases contained in this report have been selected from 82 currently active litigation files; CSU is the party pursuing relief in 3 of those cases.

#### **New Cases**

##### *Bale v. CSU*

*San Diego County Superior Court*

*Courtney Bale, a strength and conditioning coach at SDSU, complains that an unfavorable performance evaluation, being denied the opportunity to work with the football and basketball teams, and being given a computer with pornography are sex discrimination and retaliation for reporting that she was treated differently from a male strength and conditioning coach. The case is in the early discovery stage. Trial has been set for September 11, 2009.*

##### *Block v. CSU, et al.*

*Los Angeles County Superior Court*

*Joel Block, a systemwide HR manager in the Chancellor's Office, was nonretained in January 2008 for performance reasons. He alleges that a pattern of adverse treatment, including a demotion, salary freeze and suspension, culminating in his non-retention, constituted discrimination and retaliation based upon his age, disability, efforts to redress grievances, and protests over the award of a no-bid contract to consultants. The case is in the pleading stage.*

*Daves v. City of San Bernardino, et al.*

*San Bernardino County Superior Court*

*The father and son of decedent, Russell Daves, filed this wrongful death action against CSU, the City and County of San Bernardino and the State. Daves presented as a suspicious person on the hillside of the CSUSB campus at the time of the severe wild land fires of 2007. University police attempted to approach him and Daves fled. The police pursued him and were joined by the San Bernardino Police Department. The decedent was shot and killed after he backed his vehicle in the direction of the officers threatening their lives. The case is in the pleading stage.*

*Pagel v. CSU, et al.*

*Fresno County Superior Court*

*Ramona Pagel, formerly an assistant coach of track and field at California State University, Fresno, applied for the head coach position but was not selected. Thereafter, she applied for an assistant coach position under the new head coach but she was not selected. Pagel alleges that she was discriminated against because of her gender and retaliated against for complaining of Title IX and gender discrimination and that the university failed to provide her with an environment free from harassment. The complaint has not yet been served on CSU.*

*Schoenthaler v. State Personnel Board, et al.*

*Sacramento County Superior Court*

*This is a writ action brought by a CSU Stanislaus faculty member, Dr. Schoenthaler, to appeal a State Personnel Board decision sustaining CSU's suspension and demotion of him for scientific and academic misconduct. Dr. Schoenthaler used false data in support of change of venue in the Scott Peterson trial in January 2004. Hearing is scheduled for April 24, 2009.*

*SDSU Foundation v. Redevelopment Agency of San Diego*

*San Diego County Superior Court*

*SDSU Foundation filed a complaint against the Redevelopment Agency of San Diego for breach of contract and to require the Agency to sell property in the old Paseo redevelopment area to the Foundation as required by the contract. The Agency and the City of San Diego cross-complained against the Foundation for breach of contract for refusing to process land use entitlements relating to the Paseo redevelopment area through City permit processes and for failing to negotiate in good faith with the Agency to execute a Development Agreement for the Paseo project. The Agency and City also cross-complained against CSU for inducement of breach of contract and interference with contract and economic relations. The foundation has accepted CSU's tender of its defense. The case is in the pleading stage.*

Verellen v. CSU, et al.

Los Angeles County Superior Court

*Paul Verellen, a systemwide HR manager in the Chancellor's Office, was nonretained in March 2008 for performance reasons. In September 2007, immediately after learning informally of his supervisor's dissatisfaction with his performance, Verellen filed a whistleblower complaint that a labor relations consultant was improperly retained by the CSU. After he was formally advised a few days later that he would not receive a merit salary increase because of his performance problems, he filed a whistleblower retaliation complaint and a complaint of age discrimination. He filed a second retaliation complaint after he was nonretained. His retaliation and age discrimination complaints were investigated and rejected. Verellen then filed a petition for writ of mandate claiming the retaliation investigative outcomes are wrong and requesting reinstatement. Simultaneously, Verellen filed a complaint for damages for whistleblower retaliation and age discrimination. He is 58 years old. CSU filed a motion to stay the damage claim until the writ is resolved. That motion was granted.*

**Construction Cases**

CH2M HILL v. BOT

San Francisco County Superior Court

CH2M Hill was the general contractor on the SFSU technology infrastructure project. The project was only 50% complete on the date it was scheduled to be fully completed in April 2006. CH2M Hill filed this action to have the court declare the contract illegal and invalid and excuse it from performing. In January 2007, the University terminated CH2M Hill from the project. The case is in the discovery stage. *Trial is set for May 26, 2009.*

**Employment Cases**

Carreira v. CSU, et al.

Los Angeles County Superior Court

Maria Carreira, a professor in the Department of Romance, German and Russian Languages and Literature filed a lawsuit claiming that she was retaliated against for having previously filed a whistleblower complaint. Although Carreira's whistleblower complaint was intended to be confidential, it was released by faculty members to others in her department and Carreira claims she was then bullied and harassed as a result. An outside investigation concluded that some of her claims had merit, but that she had not suffered any adverse employment consequences. Appropriate action was taken against those found to be at fault.

In 2007 the court allowed Carreira to add a petition for writ of mandate to her existing claims, alleging that CSU abused its discretion in the investigation and response to her whistleblower retaliation complaint. In early 2008 the court granted Carreira's petition, finding that the underlying investigation was legally flawed and ordering that the CSU set aside its determination

on Carreira's retaliation complaint. CSU appealed this ruling. The appellate court dismissed the appeal, ruling that the writ decision could not be separately determined on appeal until Carreira's other claims were resolved by the trial court. *A global settlement of all claims was reached on December 3, 2008 at a cost to CSU of just under \$1 million. Carreira was paid \$530,000, and the balance used to purchase a long term annuity and five years of CSU retirement service credit. Based on her career achievements, Carreira was also promoted to full professor and granted her normal sabbatical leave.*

EEOC v. CSU

U.S. District Court, San Francisco

Lawford Goddard, a long-term lecturer at SFSU, and then age 61, applied and was a finalist for a tenure-track position in the Department of Black Studies. The successful candidate, Antwi Akom, had a significant publication record and was then age 36. Goddard alleges he was the most qualified candidate and was rejected only because of his age. His complaint for age discrimination is being prosecuted on his behalf by the Equal Employment Opportunity Commission. *An early mediation in October 2008 was unsuccessful. The case is in the discovery stage, and trial is set for August 31, 2009.*

King, Horsford, Snow et al. v. Shell, et al.

Brown v. CSU, et al.

King & Snow v. CSU. Et al.

Fresno County Superior Court

Daniel Horsford, Steven King and Richard Snow, three former Fresno campus police officers, recovered a \$1.17 million verdict for reverse discrimination against the campus in 2000, which has been paid. The court also awarded \$3.2 million in attorney fees which has been paid. Plaintiffs filed an appeal of the attorney fee award, seeking a higher amount. *In September 2008, the court of appeal affirmed the trial court's ruling, except remanded the case to the trial court to confirm that it had considered a certain category of attorney fees in calculating the award. On November 7, 2008, the trial court issued a decision confirming it had considered that category. The case is now closed.*

Auwana Brown, a former Fresno State police officer, settled a sexual harassment lawsuit against the University in 1998. As a part of the settlement, Brown agreed to a future resignation after she vested in the state retirement plan (i.e., by August 31, 2000). After the Horsford verdict was reached on August 11, 2000, Brown tried to unilaterally rescind her resignation less than two weeks before it was to become effective. The campus denied her request. Brown petitioned the State Personnel Board to reinstate her. The SPB refused, and Brown then petitioned the court to order the SPB to set aside her resignation. The court instead sent the case back to the SPB for further findings. After three years of inactivity, the SPB issued a second decision denying Brown reinstatement. Brown also filed a civil suit for damages. Both cases have been consolidated, but her civil suit was stayed while Brown further challenged the SPB's decision. *In*

*November 2008, the court denied Brown's (second) petition. Brown intends to pursue in her damage case her contention that it violates public policy to include in a settlement agreement in an employment discrimination case a bar to future reemployment by the state agency sued.*

Richard Snow suffered a work-related hip fracture in November 2000 and is on disability retirement. He filed a new lawsuit alleging that the university discriminated against him because of his disability, failed to accommodate him, and retaliated against him because of the Horsford verdict. Steven King also filed a new lawsuit after the Horsford verdict claiming that the university discriminated and retaliated against him, because he was not appointed lieutenant and/or chief of police in the CSU Fresno Police Department. The Snow and King cases were consolidated. *These cases have settled, with cash payments and annuities for Snow, King and their attorneys, at a total cost to CSU of \$1.829 million.*

Ohton v. SDSU, et al.

San Diego County Superior Court

David Ohton, a SDSU strength and fitness coach, sued CSU and various individuals for alleged retaliation under the state "whistleblower" statute, claiming he was retaliated against for statements he made in CSU's investigative audit of alleged improprieties in the SDSU Athletics Department and equipment room. The trial court granted CSU's motion for summary judgment on the ground that Ohton had not sought to reverse the university's administrative determination that there was no retaliation, before filing suit. Ohton appealed. The Court of Appeal reversed and instructed the trial court to give Ohton an opportunity to amend his complaint. Ohton then amended his complaint and added a new petition for writ of mandate to reverse the university's administrative determination. The trial court again ruled in CSU's favor, finding that CSU's process met the requirements of the California Whistleblower Protection Act.

Ohton filed a second lawsuit and writ petition seeking to set aside a later administrative finding that subsequent actions were also not retaliatory for his participation in the 2002-03 audit. The cases were consolidated. The court stayed the second Ohton lawsuit as Ohton appealed the decision in the first. *The appeal is in the briefing stage.*

Runyon v. CSULB, et al.

Los Angeles County Superior Court

L.R. Runyon, a professor in the Finance Department of the College of Business, alleges he was removed from his position as department chair in retaliation for reporting alleged improper activities by the Dean of the College of Business, Luis Calingo. Runyon made various complaints to his supervisors and others that the Dean made inappropriate and wasteful business trips and spent too much time away from campus. The Dean subsequently removed Runyon as chair of the department citing Runyon's failure to meet certain performance objectives. An extensive investigation into Runyon's claims of retaliation concluded that he was removed as department chair for performance reasons and not in retaliation for his complaints about the

Dean. In 2006, the court granted CSU's motion for summary judgment and dismissed Runyon's case. Runyon appealed. *On October 3, 2008 the Court of Appeal upheld the judgment in CSU's favor. Runyon filed a petition for hearing before the California Supreme Court, which was granted. The Supreme Court appeal is in the briefing stage, and the court has not yet set a date for oral argument.*

Schmidt v. CSU, et al.

U.S. District Court, San Diego

Deena Schmidt, former women's swimming coach at SDSU, filed this lawsuit for discrimination, retaliation and Title IX violations, based on her gender and medical condition (cancer) after her employment contract expired and was not renewed in July 2007. *On September 15, 2008, the parties settled for a payment to Schmidt of \$1,450,000.*

Shubin v. Jenkins, et al.

Sacramento County Superior Court

Rebecca Shubin was a tutor for the men's basketball team at CSU Sacramento who claims to have been subjected to inappropriate sexual comments and touching by the coaching staff. *Plaintiff has accepted \$75,128 in settlement for her claims.*

Vivas v. CSU, et al.

Fresno County Superior Court

Lindy Vivas, former head women's volleyball coach at Fresno, filed this lawsuit for discrimination, retaliation and Title IX violations, based on her sexual orientation, gender and marital status, after her employment contract expired and was not renewed in December 2004. Vivas reapplied for the position, and was considered. After evaluating all of the applicants, Ruben Nieves was hired as the new head coach. After a five week trial in July 2007, a verdict was returned against CSU for \$5.85 million. In response to CSU's post-trial motions, the court determined the verdict excessive and reduced the amount to \$4.51 million. The court also awarded \$678,258 in attorney fees and costs. CSU appealed. *The case has settled for \$5.2 million. Vivas was paid \$2.1 million in cash, and the balance was used to purchase long term annuity payments for Vivas and her attorneys.*

**Environmental Cases**

City of San Diego v. Trustees, et al.

Del Cerro Action Council v. Trustees, et al.

City of San Diego, et al. v. CSU

SDMTS v. CSU, et al.

SANDAG v. CSU, et al.

San Diego County Superior Court

The EIR for the 2005 SDSU campus master plan was challenged in three lawsuits filed by the City of San Diego, Alvarado Hospital and Del Cerro Neighborhood Association, each alleging the EIR did not adequately address necessary mitigation measures. The Alvarado lawsuit has been dismissed.

After the Supreme Court's City of Marina decision, SDSU prepared a revised 2007 Master Plan and EIR that has been challenged again by the City of San Diego, the San Diego Metropolitan Transit System and the San Diego Association of Governments. Each alleges that the EIR does not adequately address necessary mitigation measures. The Del Cerro lawsuit and these three new lawsuits have been consolidated. *Briefing will commence in early March. The hearing is set for September 25, 2009.*

#### Lagos v. CSU

San Francisco County Superior Court

Lagos, a private citizen representing himself, filed this action to challenge the Board's approval of the SFSU Master Plan EIR. He generally alleged that the CSU failed to comply with CEQA notice requirements and consider public comments. CSU twice challenged the legal sufficiency of his complaint. *The court has sustained CSU's challenge and dismissed this case.*

#### LandValue 77, et al. v. CSU, et al.

Fresno County Superior Court

LandValue 77, a private business entity in Fresno, filed a CEQA challenge to the Campus Pointe project, together with a claim of conflict of interest involving former Trustee Moctezuma Esparza, whose company will operate a movie theater in the project. The hearing on LandValue's CEQA claims took place in May 2008. The court deferred ruling on these claims pending briefing and final hearing on the non-CEQA claims. *The court has set a final hearing on the merits, for both CEQA and non-CEQA claims, for April 10, 2009.*

### **Personal Injury Cases**

#### Daniels v. The Fraternity Phi Gamma Delta, et al.

Fresno County Superior Court

Parents of Danny Daniels, a 19 year old student who died of alcohol poisoning in the Phi Gamma Delta fraternity house in January 2007, have filed this wrongful death claim against CSU Fresno. Plaintiffs claim that CSU knew or should have known that the fraternity was serving alcohol to minors. *Plaintiffs dismissed the fraternity, leaving CSU as the sole defendant. The case is in the discovery phase. Trial is set for November 16, 2009.*

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Jones v. Cal Poly Pomona, et al.

Los Angeles County Superior Court

Paul Jones is an outside high voltage contractor, who suffered severe injuries (and ultimately had his arm amputated) while working at an electrical transformer station at Cal Poly Pomona. He claims that a campus electrician improperly energized the station in violation of campus policies and procedures. His wife is claiming a loss of consortium. *Mediation took place in January 2009. The parties settled for \$20 million. CSU will contribute \$3 million from the CSU Risk Pool, and the balance will be covered by various layers of excess insurance.*

**Student Cases**

Balderramos v. SJSU

Santa Clara County Superior Court

Alfredo Balderramos, a student at SJSU, filed this writ action to overturn a disciplinary sanction imposed during his freshman year after he was found to have made a threat of physical harm towards other students. His writ challenges procedural aspects of the disciplinary process, including whether hearsay testimony can support the imposition of discipline. *Balderramos has taken no steps to complete preparation of the administrative record, a prerequisite to having the court hear the case.*

Every Nation Campus Ministries, etc. v. Reed, et al.

U.S. District Court, San Diego

A group of Christian student organizations and students at the San Diego and Long Beach campuses sued under various legal theories to challenge the constitutionality of the CSU anti-discrimination policy, which refuses recognition of student organizations that discriminate on the basis of religion, sexual orientation or marital status. The plaintiff groups exclude non-Christians, homosexuals and others from joining or becoming officers. They allege that their First Amendment rights of freedom of religion and association trump CSU's anti-discrimination prohibition, and that they must be recognized and provided full access to university facilities. The court denied plaintiffs' motion for a preliminary injunction, and both sides filed summary judgment motions. The court took the matter under submission in July 2006. *In February 2009, the court found CSU's non-discrimination policy constitutional, and granted CSU's summary judgment motion. Plaintiffs filed an appeal. This issue is raised in several similar suits throughout the nation that have produced mixed results. The University of California's non-discrimination policy, also ruled constitutional, is currently before the Ninth Circuit Court of Appeals.*

Martinez, et al. v. Regents of the UC, et al.

Yolo County Superior Court

This is a class action filed by non-resident citizen students against UC, CSU, and the California Community Colleges, challenging the exemption from out-of-state tuition for those, including

undocumented immigrants, who meet the three year California high school attendance requirement of AB540. Plaintiffs allege AB540 violates federal immigration laws, the U.S. and California Constitutions, and the Unruh Act. Plaintiffs seek an injunction enjoining enforcement of AB540, a declaration that the statute is unlawful, class-wide tuition restitution, damages, and attorney fees. Defendants collectively filed motions to dismiss, which were granted. Plaintiffs appealed. The appellate court ruled in favor of the plaintiffs, remanding the matter back to the trial court. Defendants petitioned the California Supreme Court and review was granted. *Oral argument has not yet been set.*

## **Other Cases**

### CSU v. CFA

Los Angeles County Superior Court

CSU filed this petition to vacate the ruling in an arbitration of several consolidated CFA grievances regarding workload in the Faculty Early Retirement Program. One grievance covering a group of FERP faculty alleged they had impermissibly been assigned a teaching load entirely of classroom work. Another grievance, on behalf of an individual, claimed that his FERP workload didn't properly reflect his pre-FERP workload. After an initial award against CSU on both grievances, which treated the recoveries separately, the arbitrator issued a supplemental ruling extending the monetary award from the individual case to a wide group of faculty who did not grieve that issue. This supplemental ruling increases CSU's liability significantly. The petition was denied. *CSU appealed.*

### CSU v. Dynegy, Inc., et al.

San Diego County Superior Court

In 2005, CSU filed a complaint against a number of producers, marketers, traders, transporters, and distributors of natural gas, for manipulating and fixing their price in violation of state antitrust laws. The case was consolidated with many others in San Diego County Superior Court asserting the same claims. In 2007, two of the smaller defendants settled out for an agreement to provide helpful documents and cash payments that were applied to litigation costs going forward. Settlements were reached with Aquila, Dynegy and TXU defendants and CSU received a pro rata distribution of \$735,000. *In 2008, settlements were approved with Duke, Coral, Encana & Reliant, and CSU received pro rata distributions of approximately \$1.5 million. Settlement discussions with The Williams Companies and CMS Energy Corporation are underway.*

### Marketing Information Masters, Inc. v. CSU, et al.

U.S. District Court, San Diego

Plaintiff Marketing Information Masters alleged that SDSU and its employee Robert Rauch violated MIM's copyright by including large portions of its 2003 Pacific Life Holiday Bowl report in SDSU's 2004 Holiday Bowl report. The court dismissed the claim against CSU, ruling that the changes Congress made to the Copyright Act to permit copyright infringement claims

against the states, are unconstitutional. In December 2008, the court dismissed all remaining claims, except against Rauch in his individual capacity. *On February 12, 2009, the parties agreed to settle for \$15,000.*

Rodriguez v. CSU, et al.

Los Angeles County Superior Court

Raul and Crystal Rodriguez are graduates of California State University, San Bernardino, who complain that a 2007 salary increase for CSU executives, approved retroactive to the beginning of the fiscal year, at the first Board meeting following late approval of the state budget, is unconstitutional because it constitutes extra compensation for services already performed and/or a gift of public funds. *The court ruled in CSU's favor, and the case has been dismissed.*

***Administrative Hearings Report***

This is a new report on the outcome of administrative hearings that raise significant public policy issues and/or have broad impact on the CSU system.

CSUEU v. Trustees

In an unfair labor practice charge before the Public Employees Relations Board, CSULA Extended Education English language instructors (who have formed Unit 13, a new bargaining unit) claimed that they were “academic” employees as that term is used in SB 1212, and therefore entitled to the same elaborate grievance procedures available to faculty members. PERB dismissed this charge, ruling that these CSULA English instructors are not “academic” employees for purposes of the SB 1212 grievance procedures since they did not have this access in the past and are presently negotiating their own unit-specific grievance procedures.