

May 30, 2018

From: The Judiciary Committee of the Academic Senate

Re: Math Department Appeal of Senate Action

On May 7<sup>th</sup> the Judiciary Committee of the MSJC Academic Senate received a formal Appeal under Article XIII Section 4 of the MSJC Academic Senate Constitution concerning the action the Academic Senate took to reduce units for math courses. The Math Department appealed on several grounds. The appeal petition was accompanied by the appropriate number of signatures of active MSJC Faculty members.

The Judiciary began the process of investigating the circumstances of the appeal and requested additional information from both the Math Department and the Senate. These additional materials were provided by the deadline of May 18<sup>th</sup>. Most of the original items identified in the original appeal were not related to the MSJC Constitution and did not fall under the purview of the Judiciary Committee. The Senate agreed that item 3 (voting occurred by secret ballot) did occur and agreed that it was against a more recent interpretation of Brown Act than is in the MSJC Constitution. The Senate then voted to reverse that action and reconsider the issue in the fall.

The Math Department wanted the Judiciary to consider item 1 (that the Executive Senate should not have considered the question since the site councils had not supported the agendaized action item). According to the Math Department the reason that the Executive Senate should not have considered the item is that Article XII, Section 3 states in part: **Those issues determined before the Site Councils shall be advisory to the Executive Senate as they affect college-wide issues. However, the Executive Senate cannot proceed on those matters which affect the faculty college-wide without**

1. **concurrence of the Site Councils**
- OR**
2. **a general referendum.**

The Math Department argued that the statement “concurrence of the Site Councils” means that the Site Councils must both support an item before it can go to the Executive Senate based on the use of the word concur.

*It is the opinion of the Judiciary that this is not the case and we believe this for two reasons.*

Firstly, the preceding sentence makes it clear that the Site Councils are advisory to the Executive Senate, which means that the Site Councils suggest but do not dictate policy. In other words if the Executive Senate could only hear items that had already been decided on by the Site Councils then they would simply be acting exclusively to support those items already voted on by the site

councils. This interpretation does not fit with the language of the constitution or with the prior practices of the Senate.

Secondly, concurrence does not mean agreement. The statement does not require that the Site Councils approve of an item before it can go to the Executive Senate. We take the use of the word concurrence to mean that the Site Councils must have both heard the item and taken a vote on the item. Then their decision can be used as advisory to the Executive Senate.

*Based on this the Judiciary Committee does not support the appeal of the Math Department.*

As an additional note, the Judiciary Committee feels strongly that these events have demonstrated the need for the Constitution of the Academic Senate to be revised. There are several areas where the language of the constitution is unclear and confusing and some areas (e.g. the use of Secret Ballots) that are in direct opposition to the Brown Act. We strongly advise the Senate to complete a revision of the Constitution by the end of Academic Year 2018-19.