

November 20, 2001

Members of Committee on Affirmative Action and Diversity
UCSD Academic Senate

Dear Committee members,

The following addresses a concern expressed about the admissibility of incentives for diversity in relation Proposition 209 at our meeting of 11/13/01 and summarizes a related discussion from the 11/19/01 UCAAD meeting:

Proposition 209, which went into effect on August 28, 1997 as Section 31 of Article 1 of the California State Constitution, requires that the University shall not discriminate against or grant preferential treatment to any individual or group on the basis of race, sex, color, ethnicity or national origin. Proposition 209 also specifies that the prohibitions do not apply to actions which are necessary to establish or maintain eligibility for any Federal program, where ineligibility would result in a loss of Federal funds to the University.

As a Federal contractor, the University of California has an obligation to comply with affirmative action regulations governing all levels of employment, including academic personnel practices.¹ The University also has an obligation to comply with State and Federal laws that prohibit discrimination on the basis of race, sex, color, national origin, and other protected categories. Therefore, an effective affirmative action program for faculty remains a legal requirement for the University of California. Enforcement of Federal contracting regulations can change over administrations, but the Federal requirements themselves are not likely to change, and in fact were renewed in January 2001.

With regard to women faculty, in many fields the data reflect substantial numbers of qualified women in the labor pool, yet many fewer women entering into the ladder rank faculty.² In these areas, efforts must be made to identify and eliminate barriers, both within the University and without, that prevent women from obtaining faculty appointments and progressing through faculty ranks at the University of California. For a summary of Federally Mandated Affirmative Action programs that UCSD must implement, see AA&D 10/2/01 packet, enclosure 8, p. 2-5)

With regard to minority faculty, in many fields the data reflect an under-representation of minorities pursuing doctoral education necessary to qualify for faculty appointments. In these areas, efforts must be made to expand the

¹ 41 C.F.R 60 et seq.

² California State Auditor Report on the University of California, May, 2001.

pipelines of minority students entering graduate programs. To answer this challenge, the University of California may engage in a variety of voluntary practices that, although not strictly required by Federal affirmative action regulations, promote values of equal employment opportunity and are consistent with the State Constitution and University policy. These types of non-preferential affirmative action programs are important vehicles for expressing the University's commitment to diversity, equal opportunity, and academic freedom (see AA&D 10/2/01 packet, enclosure 8, p. 1-2).

As a practical matter, UC and UCSD may define diversity at any and all levels of its activities as part of its educational goal and its definition of academic excellence. Language promoting the goals of achieving diversity can become a part of standard policies for the recruitment, evaluation, and retention of UCSD faculty and Administrative staff. In fact, Federal regulations require regular reporting and evaluation with respect to the setting and achieving of diversity goals on the part of deans and the heads of administrative units.

UC Office of the President and Chancellor Dynes have both repeatedly urged a definition of academic excellence which identifies campus diversity as a critical ingredient as a matter of University and campus policy. The letter from President Atkinson to the UC Chancellors on 1/3/01 (attachment 1) reads in part, "continued academic excellence will require increased attention to issues such as multiculturalism, economic opportunity, and educational equity to ensure that they are reflected strongly in the University's teaching, curriculum, and research.

The 1/3/01 letter outlines an incentive program in which 2 of its 3 criteria seek to identify outstanding recipients that promote diversity at the awarding campus: 1) research that advances the understanding of issues around diversity; and 2) a demonstrated commitment to issues of social, educational, and economic disadvantage in their teaching and service. Similarly, the Faculty Career Development Program awarded by CAAD contains as criteria #3 of its call for proposals "The applicant's efforts to diversify the campus, e.g. , curriculum development, mentoring students, participation in outreach activities, other avenues the applicant many enumerate". Departmental chairs are also asked to rate the applicant's "activities to diversify the campus".

These examples of non-preferential incentives that further an identified and necessary component of UCSD's educational mission as a public research university meet the standards set by Proposition 209, and help fulfill the university's obligations as a Federal contractor. Moreover, such incentives represent a crucial tool to encourage the promotion and enhancement of diversity at all levels of the university

Respectfully,

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