



ACADEMIC SENATE MEETING

February 5, 2019 | 11:30 a.m. – 12:30 p.m. | Faculty House

1. Call to Order:

President Loren Sachs called the meeting to order at 11:33 a.m.

Senate Members: (See Voting Tallies Chart at the end of these minutes for arrival times and voting records.) Kaveh Agahi, Associated Students Representative; Carol Barnes, Counseling Senator; Vice-President Jamie Blair, Senator at Large; Cameron Brown, Athletics and Kinesiology Senator; Eric Cuellar, Senator at Large; John Dale, Library Senator; Matt Denney, Technology Senator; Rendell Drew, Senator-at-Large; Cynthia Ely, Part-Time Senator; Immediate Past President Lee Gordon, Senator at Large; Anna Hanlon, Curriculum Chair; Kelly Holt, Senator-at-Large; Darryl Isaac, Consumer Health Sciences Senator; Secretary Marilyn Kennedy, Literature and Languages Senator, PDI Chair; Doug Lloyd, Math and Sciences Senator; Leland Means, Visual and Performing Arts Senator; Jeanne Neil, Business and Computing Senator; Clyde Phillips, Student Services Senator; Irini Rickerson, Senator at Large; Brent Rudmann, Social and Behavioral Sciences Senator; President Loren Sachs, Senator at Large; Will Thai, Part-Time Senator.

Senate Members Absent: Kaveh Agahi, Kelly Holt.

Guests: Kevin Ballinger, Jaki Kamphuis, Rich Pagel, Sheri Sterner.

2. Approval of the Agenda:

Motion 1: Senator Isaac moved to approve the agenda; motion seconded; motion approved unanimously.

3. Approval of the Minutes for December 11, 2018 & January 29, 2019

Motion 2: Secretary Kennedy moved to approve the December 11, 2018, minutes; motion seconded; motion approved unanimously.

Motion 3: Secretary Kennedy moved to approve the January 29, 2019, minutes with minor changes; motion seconded; motion approved unanimously.

4. Public Comments:

No public comments were made.

5. Consent Agenda:

Motion 4: Senator Ely moved to approve the consent agenda; motion seconded; motion approved unanimously.

- a. **FLEX Committee:**
 - i. Dawn Nicewarner

6. Officer, Senator, and Committee Reports:

A. President's Report -- President Loren Sachs:

Facilities Committee: The committee focused on updates on construction projects, including the opportunities to finish off Measure M monies, and the starting of the 2030 Facilities Master Plan; some committee members may ask permission to speak to students to supplement their data gather from questioning students directly on the campus. .

Accreditation Coordinating Committee: As part of the accreditation evaluation site visit, the accreditation team can go into any classroom during their visit at OCC without permission; share this information with your division faculty, particularly part-time faculty who might not know.

District Consultation Council: Enrollment is down now approximately 3.5-4% and the DCC was discussing what can be done about it; suggestions included enhanced noncredit and new programming using existing resources. We know that the K-12 population is decreasing and if that is our population of the future, we need to make plans; we might consider dual enrollment. (Vice President Blair suggested that research from the past has shown that Sunday classes from 1-5 p.m. are ideal for students and if we offer them it could boost enrollment.) Enrollment numbers from the December DCC meeting include the 2,000 that we borrowed from Summer 2018 are these (Senator Ely read and provided the numbers from her budget report from last week entitled "Outlook for 2019-20 Budget Development"):

- Coastline: +798 students (+14%)
 - Golden West: -1,174 students (-11.8%)
 - Orange Coast: -1,434 students (-8.44%)
- **Guided Pathways:** One of OCC's Guided Pathways coordinators, Jessica Ayo Alabi, is to be a part of the California State Academic Senate, as she received an appointment, and she will bring information back to our Academic Senate.

B. Secretary's Report -- Secretary Marilyn Kennedy:

- **Proxy Voting and Legalities:** Reported that charged by the Senate Executive Board, she did a follow up with the District Board Secretary on the legalities of proxy voting; the Board Secretary recommended seeking advice from the Orange County Department of Education as they offer legal advice to community colleges. Secretary Kennedy contacted the OCDE Legal Services Division, and she read part of the response she received to the Senate [the entirety of the email is included in the Appendix to these minutes]:

"This is an area that may be somewhat open to differing interpretation. My interpretation is below:

I agree with your counsel that the Government Code does not specifically authorize or prohibit voting by proxy. However, the Brown Act sections listed below do, if effect, prohibit proxy voting:

Government Code 54952.2 defines "meeting" as a congregation of the legislative members **at the same time and location to** discuss, deliberate, and take action.

A vote by proxy would not come within the definition of a "meeting" within this section as the proxy grantor would not be at the same time and location.

Government Code 54952.6 defines "action taken" as a collective decision of an actual vote **when sitting as a body**.

A vote by proxy would not come within the definition of an "action taken" with this section because the proxy grantor's vote would not have occurred when sitting as a body.

Government Code 54953(c)(2) requires the legislative body to report on any action taken and the vote of each member **present for the action**.

A vote by proxy would not comply with this section as the proxy grantor would not be present for the action.

Also, in Government Code 54953 the legislature specifically provided for attendance at a meeting by teleconference, and provided the requirements for such attendance. If the legislature intended to allow for proxy voting under the Brown Act then it would have provided specific authorization and procedures, as it did for teleconferencing.”

C. Guided Pathways, Intervention Strategies Work Group Coordinator – Coordinator Jaki Kamphuis:

The group has been meeting every other week and focusing on inquiry, student input, and what is working regarding interventions and will wait for the Pathways team to know how they are going to structure their pathways before we know where and how to fit the interventions in to those pathways.

7. Unfinished Business:

A. Smoke-Free Campus Survey Findings – Professor Anna Hanlon and Davis Vo:

Professor Hanlon and Davis Vo [presented the findings from the smoke free campus survey](#) [also see Supporting Documents for this Senate meeting for this information]. This process started in the spring of 2018 by students. Following that initial start, Professor Hanlon applied for a grant through the Truth Initiative and received it in the spring of 2019. A goal was to get an idea of the campus’s perception of being smoke-free, and a survey based on one developed by the U.S. Health and Human Services was adapted for use at OCC. All students, faculty, classified, management, and confidential were included. There were 1,464 survey respondents: 79% were students, 9% were faculty, 9% were staff, and 2% were management:

- The majority of each of the four constituent groups agreed that OCC should adopt and implement a 100% smoke- and tobacco-free campus.
- 50% of respondents were greatly concerned about the effects of smoking and tobacco use on campus; 69% of OCC had some level of concern. These percentages were higher for employees than students. 82% of the written responses indicated “a lot” or “a little” were related to health.
- 17% of OCC students and 6% of employees engage in vaping or smoking. Of those who vape or smoke, 65% do it on campus.

The objective of this survey was to gather data to see if the campus community supports a smoke-free campus; it did not focus on implementation, that would be the next step if we do move forward with a smoke-free campus.

The senators asked these questions and expressed these concerns:

- Implementation regarding parking lots as smoke-free zones
- Methods of enforcement and the role of the Student Code of Conduct
- Were survey respondents asked if they preferred an area for smoking?
- What if a student wanted to smoke in his/her car? Freedom is a right to do something as long as it does not harm someone else. If a student is smoking in his/her car, it is not hurting anyone else.
- GWC allows students to smoke in their cars in the parking lot.
- 25% of the survey student respondents disagree with a smoke-free campus policy
- We should consider the gains and losses in student enrollment in regards to implementing a 100% smoke-free policy
- At high schools where senators attended that were smoke-free, the restrooms were filled with smokers and smoke—maybe there needs to be some policy that affords a place to smoke on campus that will not harm non-smokers.

In response, Professor Hanlon suggested that the college would have to decide how to enforce, recommending a task force be created to support this initiative. A smoke-free campus means 100% smoke-free, including the parking lot. At CSULB there are trained student advocates who assist with enforcement by approaching students who are smoking or vaping to inform them of the policy and tell them about resources for help. The survey did not ask if the respondents preferred an area for smoking, as based on other campuses; it is confusing for students if there are some areas that allow it and others do not. Here, they could smoke on the public sidewalks off the campus, and we will have cessation support; we might be able to provide nicotine patches free of charge. At IVC and Saddleback, their enrollment did not change when they initiated smoke-free campus policies. It's about signage and education and working together. It is also a branding and social justice issue here, in terms of a toxic environment.

President Sachs stated that it would be prudent to hold the implementation of a smoke-free campus decision until all the logistics are figured out. In the next week or so senators should get feedback from their divisions on an action plan which might include a task force and get a feel for where their constituents are and what they might recommend. Deans will be sent information about this to share with their faculty, as well.

B. Accreditation Site Visit Preparation – President Kevin Ballinger:

Sheri Sterner presented on behalf of Kevin Ballinger, noting that they are meeting with the accreditation site team leaders this week to finalize logistics and will provide a calendar of events to the campus community next week. She provided an overview of the [Pirates Treasure Map to a Successful Accreditation Visit](#) and urged the senators to have their divisions read the document and participate with the document; there is a chance to win Starbucks vouchers throughout it.

C. Bylaws Revisions and Additions Discussion Only – Senators to Take Proposals to Constituents for Potential Action the Following Week:

This topic will be added to next week's agenda and also altered in response to the information provided by Secretary Kennedy this week.

8. New Business

No new business.

9. For the Good of the Order:

- A. President Sachs:** The Facilities Committee completed the funding for AAR approval for new technology for all planning council and senate members to receive iPads to facilitate meetings; in the fall we will be given iPads to receive our handouts and facilitate our work. Additionally, Administrative Secretary Goetz has provided posters on our walls here in the Faculty House displaying clearly the 10 + 1, the college mission statement, and the college governance structure.
- B. Senator Ely:** The Business Department is hosting their annual Pirate's Plank; it is open to all students and there are prizes. Applications are open through March 5th.

10. Adjournment:

President Sachs adjourned the meeting at 12:29 p.m.

MINUTES: First draft written by Ricky Goetz, Senate Administrative Secretary. Revision of first draft and Senate-approved drafts written by Senate Secretary, Marilyn Kennedy, who also distributes the final Senate-approved version to the Chancellor, Board of Trustees members and secretary, union presidents, GWC and Coastline Academic Senate presidents, OCC College President and faculty as per OCC Senate bylaws.

Voting Tallies Chart

Motion 1	Motion 2	Motion 3	Motion 4	Senate Membership
Agenda	12-11-18 Minutes	1-29-19 Minutes	Consent	
---	---	---	---	Agahi, Kaveh: Assoc. Students Representative (non-voting)
Aye	Aye	Aye	Aye	Barnes, Carol: Counseling Senator (2018-2021)
Aye	Aye	Aye	Aye	Blair, Jamie: Senator-at-Large (2018-2021)
Aye	Aye	Aye	Aye	Brown, Cameron: Athletics & Kinesiology Senator
Absent	Absent	Absent	Aye	Cuellar, Eric: Senator-at-Large (2018-2021) 11:40 arrival
Aye	Aye	Aye	Aye	Dale, John: Library Senator (2017-2020)
Aye	Aye	Aye	Aye	Denney, Matt: Technology Senator (2017-2020)
Aye	Aye	Aye	Aye	Drew, Rendell: Senator-at-Large (2016-2019)
Aye	Aye	Aye	Aye	Ely, Cynthia: Part-Time Senator (2018-2019)
Aye	Aye	Aye	Aye	Gordon, Lee: Senator-at-Large (2016-2019)
---	---	---	---	Hanlon, Anna: Curriculum Chair (Non-Voting)
Absent	Absent	Absent	Absent	Holt, Kelly: Senator-at-Large (2017-2020)
Aye	Aye	Aye	Aye	Isaac, Darryl: Con. & Health Sciences Senator (2017-2020)
Aye	Aye	Aye	Aye	Kennedy, Marilyn: Lit & Lang Senator, PDI Chair (2017-2020)
Absent	Absent	Absent	Aye	Lloyd, Douglas Math & Sciences Senator (2017-2020) 11:40 arrival
Aye	Aye	Aye	Aye	Means, Leland Visual & Performing Art Senator (2018-2021)
Aye	Aye	Aye	Aye	Neil, Jeanne: Business & Computing Senator (2016-2019)
Aye	Aye	Aye	Aye	Phillips, Clyde: Student Services Senator (2017-2020)
Aye	Aye	Aye	Aye	Rickerson, Irini: Senator-at-Large (2018-2021)
Aye	Aye	Aye	Aye	Rudmann, Brent: Social & Beh. Sciences Senator (2017-2020)
Aye	Aye	Aye	Aye	Sachs, Loren: Senator-at-Large (2016-2019)
Aye	Aye	Aye	Aye	Thai, Will Part-Time Senator (2018-2019)
---	---	---	---	Part-Time Senator Vacant (2018—2019)
---	---	---	---	Senator-at-Large: Vacant (2017-2020)
---	---	---	---	Senator-at-Large: Vacant (2017-2020)

APPENDIX

Re: Phone Call Follow-Up Questions Regarding Proxy Voting and Orange Coast College's Academic Senate

Tue, Feb 5, 2019 5:17 am

Carl Piper CPiper@ocde.us

To ProfMKennedy profmkennedy@aol.com

Hi Professor Kennedy: Feel free to share the email.

Carl

From: ProfMKennedy <profmkennedy@aol.com>

Sent: Monday, February 4, 2019 10:05 PM

To: Carl Piper

Subject: Re: Phone Call Follow-Up Questions Regarding Proxy Voting and Orange Coast College's Academic Senate

Mr. Piper,

Thank you so much for your research and knowledge, and the clarity and depth of your explanations and citations. I will share this with our E-Board and Senate. Is the email confidential? I don't wish to violate any laws or your privacy, so let me know what is appropriate and legal in terms of my use of it (in regards to the legal interpretations.) .

Sincerely,

Professor Marilyn Kennedy

-----Original Message-----

From: Carl Piper <CPiper@ocde.us>

To: 'ProfMKennedy' <profmkennedy@aol.com>

Sent: Mon, Feb 4, 2019 1:42 pm

Subject: RE: Phone Call Follow-Up Questions Regarding Proxy Voting and Orange Coast College's Academic Senate

Hi Professor Kennedy:

This is an area that may be somewhat open to differing interpretation. My interpretation is below:

I agree with your counsel that the Government Code does not specifically authorize or prohibit voting by proxy. However, the Brown Act sections listed below do, if effect, prohibit proxy voting:

Government Code 54952.2 defines "meeting" as a congregation of the legislative members **at the same time and location to** discuss, deliberate, and take action.

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Government Code 54952.6 defines "action taken" as a collective decision of an actual vote **when sitting as a body.**

A vote by proxy would not come within the definition of an "action taken" with this section because the proxy grantor's vote would not have occurred when sitting as a body.

Government Code 54953(c)(2) requires the legislative body to report on any action taken and the vote of each member **present for the action.**

A vote by proxy would not comply with this section as the proxy grantor would not be present for the action.

Also, in Government Code 54953 the legislature specifically provided for attendance at a meeting by teleconference, and provided the requirements for such attendance. If the legislature intended to allow for proxy voting under the Brown Act then it would have provided specific authorization and procedures, as it did for teleconferencing.

Government Code § 54952.2. Meeting; prohibited communications; exclusions from chapter

(a) As used in this chapter, “**meeting**” means any congregation of a majority of the members of a legislative body **at the same time and location**, including teleconference location as permitted by [Section 54953](#), to **hear, discuss, deliberate, or take action** on any item that is within the subject matter jurisdiction of the legislative body.

Government Code § 54952.6. Action taken

As used in this chapter, “**action taken**” means a **collective decision** made by a majority of the members of a legislative body, a collective commitment or promise by a majority of the members of a legislative body to make a positive or a negative decision, **or an actual vote by a majority of the members of a legislative body when sitting as a body or entity**, upon a motion, proposal, resolution, order or ordinance.

Government Code § 54953. Meetings to be open and public; attendance

(a) All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter.

(c)

(1) No legislative body shall take action by secret ballot, whether preliminary or final.

(2) **The legislative body of a local agency shall publicly report any action taken and the vote or abstention on that action of each member present for the action.**

Carl Piper

Counsel

Schools Legal Service

Orange County Department of Education

200 Kalmus Drive

Costa Mesa, CA 92626

714 966 4214

www.ocde.us

From: ProfMKennedy <profmkennedy@aol.com>

Sent: Monday, February 4, 2019 12:24 PM

To: Carl Piper <CPiper@ocde.us>

Subject: Phone Call Follow-Up Questions Regarding Proxy Voting and Orange Coast College's Academic Senate

Hello Mr. Piper,

Thank you for taking my phone call and offering to help in answering our academic senate executive board's questions regarding the Brown Act and proxy voting.

As per our phone call, a senator in our academic senate is proposing to add written proxy voting to our bylaws, allowing a senator to give his or her written proxy to another senator: "A valid proxy vote is one offered in writing, signed and submitted by a voting Senate member."

I had mentioned to you that our district's general counsel had advised that it is not disallowed, but he had recommended against it for our senate because it could lead to potential violations of the Brown Act, as senators could talk amongst themselves away from the public meeting about issues on the agenda for a vote or action. Some of the senators are unclear on what this means, so I was advised by the Board Secretary of our district to contact OCDE for clarification. The sections of the Brown Act that are most concerning in this regard are the ones cut and pasted below, 54953.c. (1) and (2). Our questions are these:

- Does the Brown Act prohibit or allow this type of written proxy voting?
- If not allowed or recommended, what would be the reason?
- If allowed, what are things to be observant and cautious of?
- If allowed, how are absences recorded and votes tallied for those absent but voting by written proxy?

**["The Brown Act"] Government Code - GOV
TITLE 5. LOCAL AGENCIES [50001 - 57550] DIVISION 2. CITIES, COUNTIES, AND OTHER AGENCIES [53000 - 55821]
PART 1. POWERS AND DUTIES COMMON TO CITIES, COUNTIES, AND OTHER AGENCIES [53000 - 54999.7]
CHAPTER 9. Meetings [54950 - 54963]**

54953.

(a) All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter.

(b) (1) Notwithstanding any other provision of law, the legislative body of a local agency may use teleconferencing for the benefit of the public and the legislative body of a local agency in connection with any meeting or proceeding authorized by law. The teleconferenced meeting or proceeding shall comply with all requirements of this chapter and all otherwise applicable provisions of law relating to a specific type of meeting or proceeding.

(2) Teleconferencing, as authorized by this section, may be used for all purposes in connection with any meeting within the subject matter jurisdiction of the legislative body. All votes taken during a teleconferenced meeting shall be by rollcall.

(3) If the legislative body of a local agency elects to use teleconferencing, it shall post agendas at all teleconference locations and conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the legislative body of a local agency. Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public. During the teleconference, at least a quorum of the members of the legislative body shall participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction, except as provided in subdivision (d). The agenda shall provide an opportunity for members of the public to address the legislative body directly pursuant to Section 54954.3 at each teleconference location.

(4) For the purposes of this section, "teleconference" means a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either audio or video, or both. Nothing in this section shall prohibit a local agency from providing the public with additional teleconference locations.

(c) (1) No legislative body shall take action by secret ballot, whether preliminary or final.

(2) The legislative body of a local agency shall publicly report any action taken and the vote or abstention on that action of each member present for the action.

Thank you for your time and work on this; it is very much appreciated,

***Professor Marilyn Kennedy
Orange Coast College, Coast Community College District
Academic Senate Secretary***
