From: P. Wesley Lundburg, President

To: Bill H. Pacheco, Multimedia Specialist

 Jeanette Moore, Classified Senate Vice President

 Pablo Martin, Academic Senate President

 Glenn Magpuri, Instructional Support Supervisor

 Ryan Roper, ICS Network Specialist

 Laura Gonzalez, Professor of Anthropology

 San Diego Miramar College Academic Senate

Subject: Response to Letter: “Equity concerns with the reorganization planning and execution”

Date: December 19, 2022

Greetings to All:

I am writing in response to your letter of December 12, 2022 (attached for your convenience) sent to myself and the Miramar College administrative leadership team. I want to begin by thanking you for recognizing that “college structures are ever-evolving and that change and innovation often come with growing pains. They also require difficult administrative choices.” I would add that difficult decisions, by the nature of them as implied by the word *difficult*, carry a level of weighing between circumstances. As such, difficult decisions sometimes do not meet with the agreement of all. In the case of the reorganization that is the subject of your letter, careful consideration was given in determining how best to implement the reorganization and its staffing needs under the requirements and guidelines of the law, the collective bargaining agreement, and district policies. In the case of your letter, the re-organization itself does not appear to be questioned; rather, it is the reclassification of certain positions that is under question.

To support the questions in your letter, you have cited Education Code, Title 5, Section 53021, which I have also attached for your convenience should you choose to read the section in its entirety. That section of Ed Code governs recruitments for employment, as you know. It is important to note that the citation you provided omits key pieces that are pertinent to the reorganization and associated reclassifications you have expressed concern about. The first seven words of the section you have quoted states, “(a) Except as otherwise provided in this section,” and then picks up with the portion you have quoted. Also omitted are the exceptions provided, which read as follows:

*(d) For purposes of this section, a vacancy is not created, and the requirements of subdivisions (a) and (b) do not apply when:*

 *(1) there is a reorganization that does not result in a net increase in the number of employees;*

 *(2) one or more lateral transfers are made and there is no net increase in the number of employees;*

 *(3) a position which is currently occupied by an incumbent is upgraded, reclassified, or renamed without significantly altering the duties being performed by the individual;*

 *(4) the faculty in a division or department elect one faculty member to serve as a chairperson for a prescribed limited term;*

 *(5) the position is filled by a temporary, short-term, or substitute employee appointed pursuant to Education Code sections 87422, 87480, 87482.5 (b), 88003, 88106 or 88109;*

 *(6) a part-time faculty member is assigned to teach the same or fewer hours than they previously taught in the same discipline without a substantial break in serve. For purpose of this section, ‘a substantial break in service’ means more than one calendar year or such different period as may be defined by a collective bargaining agreement; or*

 *(7) an individual not currently employed by the district, who is specially trained, experienced, and competent to serve as an administrator, and who satisfies the minimum qualification applicable to the position, is engaged to serve as an administrator through a professional services contract. No professional service contract, or series of may exceed two years in duration.*

The context here is critical, as the exceptions are met with this re-organization and the associated reclassifications. The re-organization does not constitute a net increase in employees within the job classifications (d)(1), and the positions in question “[are] currently occupied by an incumbent [and are] upgraded, reclassified, or renamed without significantly altering the duties being performed by the individual” (d)(3). As the positions are reclassified within the same job classification and represent only additional responsibilities, they do not constitute a significant alteration of duties. Please note that the application of any of these items warrants an exception to subdivisions (a) and (b), as indicated by “or” between items (6) and (7).

The claims that Miramar College administration has not followed district policies (the sum of the remaining citations) is incorrect, as district policies provide the application of the Education Code to the practices required by the Board of Trustees for the SDCCD. Those policies apply when positions are created that require recruitment as provided by Ed Code. As outlined above, the provisions of Ed Code have been met and do not require recruitment. Reclassifications are not unusual in the district, and have occurred even recently at Miramar College, and without objection or concerns raised. Those have taken place, as is the case in the current situation, according to applicable law and policies.

As your letter refers to EEO policies and identifies equity concerns, I think it is important to note that the Education Code cited and the exceptions noted above provide a means for protecting against potential inequities in that they prevent inequitable treatment of existing employees during a re-organization, in occurrences where their positions are eliminated, by providing that such positions are to be reclassified. If I’m reading your claims accurately, it seems the opposite is being promoted by demanding that the reclassified positions be posted for open recruitment; doing so would potentially introduce inequitable practices.

Your letter makes a series of requests, as follows:

*1. That the Miramar Administration put a hold on implementing the Administrative*

*Services reorganization plan so that the campus has the opportunity to coordinate*

*and execute full and fair, equity-focused policies and procedures with campus*

*constituencies in a manner consistent with their obligations under State and*

*District policy.*

*2. We further ask that, upon the reorganization’s approval, all proposed Director*

*positions be opened for recruitment to the general public.*

*3. Further, we ask that the Miramar Administration, and all other colleges in the*

*SDCCD, submit a Waiver Request and Equity Impact Statement (EIS) in the*

*absence of holding an open recruitment for any new position.*

*4. We ask that Miramar Administration work with the SDCCD’s Office of People,*

*Culture, and Technology Services (or establish a task force consisting of at least*

*one EEO representative and members from each campus constituency) to develop*

*an outreach plan ensuring that women, people of color, and other historically marginalized*

*groups are well-represented in the hiring pool for the three Director*

*positions.*

*5. We ask that college leadership enforce, and ideally seek to expand, existing*

*policies and procedures further outlining and affirming the duty of all District*

*personnel to hold open and transparent recruitments whenever possible.*

*6. Finally, the Academic Senate asks for a more detailed accounting of the fiscal*

*costs and benefits associated with this proposed reorganization.*

Regarding #1, please note that Chancellor’s Cabinet decided to hold the entire (all the colleges and district) administrative services re-organization Board of Trustees item until the January Board of Trustees meeting to ensure the item receives full consideration and is presented to the Board in a manner that is most helpful for them to consider approval. Miramar’s administrative re-organization is part of that broader proposal. As a result of the postponement, I have had further chance to double-check our adherence to the law and policies associated with the re-organization. Your letter helped me hone my review, and I have consulted with District HR as well. The determination is that there is no violation of law or policy.

Regarding #2, I have noted above that open recruitment for the positions in question is not required; further, opening the position for open recruitment would not be in accordance with the Ed Code cited, and would carry with it potential precedent for inequities, as not adhering to the exceptions creates the possibility for traditionally marginalized peoples to be forced to apply for the re-classified positions and the potential resulting loss of their jobs and a net loss of diversity in the workplace.

Regarding #3, the requested waiver is not required, given that the reclassifications are in keeping with law and policy.

Regarding #4, Miramar College has been proactive in outreach for open position in a manner that assures that “women, people of color, and other historically-marginalized groups are well-represented in the hiring” pools for our open positions. I will, however, request an analysis from the EEO office of the application pools, candidate pools, and hiring to ensure diversity. Anecdotally, I do review these as appropriate and under consultation with Legal Affairs and the EEO office when I am in doubt of the diversity at any and all points of the search process. Nonetheless, I have decided to look at this comprehensively as a response to the spirit of your concerns expressed in the letter of December 12, 2022.

Regarding #5, it is my belief that we have adhered to our duty to hold open and transparent recruitments. Again, the reclassifications in question, in accordance with Ed Code, are not subject to open recruitment. Additionally, I have been informed outside of the Dec. 12 letter that it is believed by some that the re-organization has been conducted without transparency. In addition to sharing these plans with the senate presidents, division leaders, and in meetings with the employees in the areas affected by the changes, the re-organization has been shared openly at both the Academic and Classified Professional Senates, reportedly without objection or concerns being expressed. I believe these steps constitute evidence of transparency. Your letter further asserts that there has been a failure to enter into good faith discussions with you about this re-organization. On the contrary, I and the VPs engaged in a conversation with Mr. Pacheco during the Open Forum of November 29, 2022 as well as after the forum, and have engaged in conversations with at least one other signatory on your letter; to my knowledge, none of the other signatories have reached out to us nor alerted us that they wished to discuss this. It should also be noted, as outlined above, that the re-organization plan and its associated reclassifications have gone through the process of participatory governance as an informational item, proactively engaged by Miramar administration.

Regarding #6, the fiscal accounting for the re-organization have been provided. I am happy to provide accounting estimates again, but would like clarification on “a more detailed accounting,” as it seems to be asking for more than what has been provided.

As I believe I have addressed the explicit concerns of your December 12, 2022 letter, I would like to go further and reassure you that I am deeply committed to DEIA efforts in all aspects of the college. I believe that the establishment of the LEAD office, the proposal to create a separate Strategic Goal that calls out specific DEIA efforts, the participation of myself and the executive leadership in making sure the DEIA efforts at the college are attended, as evidenced by its inclusion as a standing item on the agendas of President’s Cabinet, Executive Cabinet, and College Council. Additionally, I believe that the hiring results at Miramar College over the past 2-1/2 years and possibly prior have resulted in representative hirings; on this point, however, I want to reiterate my intention to ask the District EEO office to enter with me into an analysis to verify or correct that.

At core, I want to assure you that your letter is taken in the most positive spirit of collegiality. Where there are questions, they should be asked. I hope I have addressed them. I recognize, and ask that you do the same, that we may not agree on some points but I hope that this response to your December 12, 2022 letter demonstrates that there has been no failure to adhere to Ed Code or District policy. I hope it goes further than that, and demonstrates the Miramar College administration’s commitment to equity and equitable practices in employment, as well as in management decisions. I know I speak for the entire administrative team when I say that I deeply appreciate being given the opportunity to respond to your questions and concerns.

Best Regards,

P. Wesley Lundburg, PhD

President

San Diego Miramar College