

**[PROPOSED] RESPONSE OF BAKERSFIELD COLLEGE ACADEMIC SENATE (BODY REP.) TO
“CURE OR CORRECT NOTICE” DATED APRIL 14, 2023**

TO: STEVEN HOLMES

Pursuant to Government Code section 54960.1(c) and without conceding violations of the Brown Act, the following is the response of the Bakersfield College Academic Senate (Body Rep.) to the alleged violations in your April 14, 2023 “cure or correct” notice and notice of the actions the Academic Senate has taken in response to your specific requests to cure or correct the alleged violations.

Dear Steven Holmes,

Thank you for your email dated April 14, 2023 (copy below), containing a “cure or correct” demand under the Brown Act. Specifically, you express concern that the votes taken at the regular February 15, 2023 Senate (body rep.) meeting, which used teleconference to connect the Delano Center and BC Southwest sites listed on the public agenda, were not done with a roll call as specified in Government Code Section 54953(b)(2) and identification of votes by each member of the Senate (body rep.) as specified in Government Code Section 54953(c)(1)-(2).

Actions taken with vote on agenda items at the February 15, 2023 Senate (body rep.) meeting were: approval of the minutes of February 1, 2023, standing committee appointments, and the EODAC charge. The first two actions were unanimous and announced as unanimous. The vote was clear to any observer. The video recording of the meeting is available to the public on the Academic Senate webpage. Further, the meeting minutes reflect the vote, which the Senate approved as accurate. Therefore, the Academic Senate substantially complied with the teleconference provision for those two actions.

The Senate (body rep.) acknowledges that the vote about the EODAC charge was not unanimous. However, pursuant to Government Code Section 54960.1(d)(1), an action that is alleged to have been taken in violation of Section 54953, shall not be determined to be null and void if the action taken was in substantial compliance with Sections 54953. The video of the meeting at the time of the vote is available to the public through the Academic Senate webpage, and the meeting minutes reflect the vote. The Senate (body rep.) subsequently approved the minutes as accurate.

Even if a Brown Act violation occurred, that violation is not sufficient to invalidate the decision; you must also show harm or prejudice [[Olson v. Hornbrook Community Services District, \(2019\) 33 Cal.App.5th 502.518](#)]. The Senate (body rep.) notes that the items for vote were properly agendaized, that you were present and actively engaged in person at the February 15 meeting, and that you observed who voted in which manner. Furthermore, you initiated the referendum process for the entire Academic Senate membership (all full-time faculty) to re-vote the Senate action on the EODAC charge—the precise question at issue at the February 15, 2023 meeting. The referendum election was completed on April 12, 2023 at 5 P.M. This adequately cured and corrected any arguable issue with the February 15, 2023 vote. You sent your demand to cure and correct the day after the Academic Senate President announced the results of the referendum.

Please note the actions taken which correspond to your requests:

1. Immediately null [sic] and void all actions taken by Senate on February 15, 2023, including February 1, 2023, [sic] minutes with corrections, standing committee appointments, and EODAC charge.

Response: The action on the February 1, 2023 minutes and standing committee appointment substantially complied with the teleconference provision of the Brown Act. Furthermore, later action on March 15, 2023 by the Senate (body rep.) on the standing committee appointments supersedes the February 15 action. The Spring 2023 referendum of the entire Academic Senate is a sufficient corrective response that renders a re-vote by the Senate (body rep.) unnecessary and a violation of the procedures given in the Academic Senate Constitution and By-Laws.

2. Properly agendaize the above stated actions of the Senate on February 15, 2023, , [sic] as discussion item only, at the next regular scheduled Senate meeting, April 19, 2023, or regular scheduled Senate meeting thereafter.

Response: The actions taken at the February 15, 2023 Senate were either unanimous or were superseded by follow-up action by the Senate (body rep.) or the entire Academic Senate membership as explained above.

3. Properly conduct a roll call vote of such items at the regular scheduled Senate meeting on May 3, 2023, or regular scheduled Senate meeting thereafter.

Response: The actions taken at the February 15, 2023 Senate were either unanimous or were superseded by follow-up action by the Senate (body rep.) or the entire Academic Senate membership as explained above.

Out of an abundance of caution and to quell any concern that the Bakersfield College Academic Senate did not act in accordance with the intent of the Brown Act, the following corrective actions will be undertaken:

- A. The administrative assistant to the Academic Senate will confirm the vote of each representative present at the February 15th meeting for the vote which was not unanimous among all those still present at the time of the vote (EODAC committee charge);
- B. The confirmed vote will then be posted to the Academic Senate webpage by the Academic Senate's administrative assistant.

I trust the above is responsive to your request.

Sincerely,

President Bakersfield College Academic Senate

From: Steven Holmes sholmes@bakersfieldcollege.edu

Subject: Senate Meeting February 15, 2023

Date: April 14, 2023 at 11:31AM

To: BC_ACADSEN BC_ACADSEN@bakersfieldcollege.edu

President Strobel and Presiding Officers/Senators BC Senate:

This letter is to call your attention to what I believe was a substantial violation of a central provision of the Ralph M. Brown Act, one which may jeopardize the finality of an action to be taken by the Bakersfield College Senate.

The Senate at its regular scheduled teleconference meeting on Wednesday February 15, 2023, violated Govt. Code 54953(b)(2), "all votes taken during a teleconference meeting shall be by rollcall." Further, for meetings in general, by teleconference or otherwise, "No legislative body shall take action by secret ballot, whether preliminary or final" and "{t}he legislative body or a local agency shall publicly report any action taken and the vote or abstention on that action of each member present for the action." Govt. Code 54953(c)(1)-(2).

As you are aware, the Brown Act creates specific obligations for a meeting and creates a legal remedy for illegally taken discussions and actions — namely, the judicial invalidation of them upon proper findings of fact and conclusions of law.

Pursuant to that provision (Government Code Section 54960.1), I demand that the Bakersfield College Senate cure and correct the illegally taken action as follows:

- 1. Immediately null and void all actions taken by Senate on February 15, 2023, including February 1, 2023, minutes with corrections, standing committee appointments, and EODAC charge.*
- 2. Properly agendaize the above stated actions of the Senate on February 15, 2023, , as discussion item only, at the next regular scheduled Senate meeting, April 19, 2023, or regular scheduled Senate meeting thereafter.*
- 3. Properly conduct a roll call vote of such items at the regular scheduled Senate meeting on May 3, 2023, or regular scheduled Senate meeting thereafter.*

As provided by Section 54960.1, you have 30 days from the receipt of this demand to either cure or correct the challenged action or inform me of your decision not to do so. If you fail to cure or correct as demanded, such inaction may leave me with no recourse but to seek a judicial invalidation.

Respectfully yours, Steven Holmes

Cc: David Loy