

Office of the General Counsel

TO MEMBERS OF THE COMMITTEES ON FINANCE AND EDUCATIONAL POLICY:

ACTION ITEM

For Meeting of March 24, 2010

ADOPTION OF STATEMENT CLARIFYING THE UNIVERSITY OF CALIFORNIA'S STUDENT FEE POLICIES

RECOMMENDATION

The General Counsel recommends that the Committee on Finance recommend to the Regents that the Regents approve clarifying the intent and purpose of the Regents' student fee policies by placing an asterisk following the title of *The University of California Student Fee Policy*; *Principles Underlying the Determination of Registration Fees*; *Policy on Fees for Selected Professional School Students*; and *Principles Underlying the Determination of Fees for Students of Professional Degree Programs*, and inserting the following language at the end of the student fee policies, as shown in [Attachment 1](#):

**Nothing in this policy constitutes a contract, an offer of a contract, or a promise that any fees ultimately authorized by The Regents will be limited by any term or provision of this policy. The Regents expressly reserves the right and option, in its absolute discretion, to establish fees at any level it deems appropriate based on a full consideration of the circumstances, and nothing in this policy shall be a basis for any party to rely on fees of a specified level or based on a specified formula.*

BACKGROUND

The Regents have adopted a number of policies that establish the limitations and requirements within which the Regents expect that fee proposals submitted to them for approval will comply. For example, the Policy on Fees for Selected Professional School Students requires that fees be approved within the context of a three-year plan developed in consideration of specific factors. While these policies are intended to guide the conduct of the University's administration in developing fee proposals, they are not intended to bind the Regents or prevent them from adopting a different approach depending on the circumstances, nor are they intended to preclude the administration from seeking an exception to policy through appropriate approvals where warranted. Indeed, the authority of the Regents generally to act outside existing policy is well-established in the Regents' bylaws (Bylaw 5.1) and in case law (*Searle v. Regents* (1972) 23 Cal.App.3d 448, 451).

Despite these well-established principles, confusion recently emerged over the effect of the Regents' policies on the November 2009 fee increase proposal. Shortly before the November meeting, one newspaper mistakenly reported that the proposed fee increase, if adopted by the Regents, would constitute a policy "violation." While the newspaper promptly corrected the error, this event signaled the potential need for additional clarification in order to avoid creating misplaced expectations by prospective applicants to the University. As the Regents may recall, public perceptions and expectations played a significant role in the *Kashmiri* case, in which the court held the University was bound in contract not to raise fees, based on various public pronouncements deemed to have created binding expectations.

Accordingly, while the General Counsel believes that actions already taken by the University have mitigated possible confusion on the part of third parties, the General Counsel proposes to reflect existing law by inserting in each policy the one-paragraph notation set forth above in the Recommendation. The inclusion of this language will provide students with express notice that the Regents may alter their fee policies at any time as conditions require and will avoid incorrect claims that the existence of the policies creates contractual rights that compel the Regents to act in accordance with their fee policies.

(Attachment)