

COS Legal instructions/recommendations to the Equivalency Committee (9/9/2024) as revised in conversation with John Bratsch and Brent Calvin, 9/10/2024

1) Reviewing Applications

- a. **Legal:** Human Resources determines what information should be provided to the Equivalency Committee for consideration. The Equivalency Committee should not be considering any documentation or information other than what has been provided by Human Resources as part of the equivalency determination process.... If the committee has questions about an applicant's equivalency credentials, I recommend that it direct questions to HR and HR can address the questions as HR deems appropriate.
- b. **Brent:** it is reasonable for the committee to examine links to programs and courses applicants have provided as evidence of equivalence. However if the applicant has not provided a complete application, the committee cannot undertake to fill in the details left out.

2) Discussing Applications

- a. **Legal:** Because the committee is covered by the Brown Act, a majority of committee members must not congregate at the same place and time outside of a properly noticed meeting to "to hear, discuss, deliberate, or take action on any item that is within the subject matter jurisdiction of the legislative body." (GC 54952.2.) The committee must also avoid any communications that could be construed as a serial meeting regarding applicants. In this regard, a majority of committee members should not be communicating with each other about an applicant outside of a properly noticed meeting. Questions the committee has about an applicant may only be formulated during a properly noticed meeting, and may not be formulated by email, for example. Similarly, a majority of committee members should not communicate about the equivalency procedure outside of a properly noticed meeting.

3) Voting on applications

- a. **Legal:** Voting must occur in open session unless voting is done in an authorized closed session. Whether the committee may meet in closed session to review, discuss, deliberate, and vote upon equivalency applications is an issue we should further discuss. If the committee is permitted to meet in closed session, any votes must be reported out stating the vote of each equivalency member.
- b. **Brent:** Closed sessions for voting would be required to preserve confidentiality and should be treated the same way as Board of Trustees

closed sessions. A record of the final vote tally and a general statement of reasons for denial should be the matter of record forwarded to HR.

4) Communications to/from applicants

- a. **Legal:** based on AP 7211, there is not a current procedure that allows the committee to directly communicate with an applicant. Such communications would be inconsistent with District policy. My recommendation is that based on AP 7211, if an applicant has questions about the equivalency application, the applicant should communicate with HR. If the committee, or a committee member, communicates with an applicant to provide assistance and the assistance is motivated by a characteristic protected by law (e.g., race, gender, gender identify, sexual orientation, religious affiliation, military or veteran status, to name a few), then that assistance may constitute unlawful discrimination against other applicants who do not receive the same assistance. Even when assistance is not motivated by a protected characteristic, there is always the risk of a candidate who did not receive assistance claiming discrimination based on a protected characteristic.

5) Appeals

- a. **Legal:** It would be illegal for the committee to treat any applicant more favorably or less favorably than other applicants based on any characteristic protected by law (e.g., race, gender, gender identify, sexual orientation, religious affiliation, military or veteran status, to name a few). It is not illegal to provide a properly implemented reconsideration procedure for an applicant to request review of an unfavorable equivalency decision.
- b. **Brent:** Recognizes that any appeal procedure requires the committee to report out privileged information. If the committee sends HR the general reasons why an applicant was denied, then HR can manage to whom and how that information is communicated. Because applicants can reapply at any time, the appeal itself seems unnecessary.