

**[PROPOSED] RESPONSE OF BAKERSFIELD COLLEGE ACADEMIC SENATE (BODY REP.) TO  
“CURE OR CORRECT NOTICE” DATED MARCH 8, 2023**

TO: MICHAEL McNELLIS

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 March 8, 2023 “cure or correct” notice and the actions taken in response to your specific requests to cure or correct the alleged violations.

Dear Michael McNellis,

Thank you for your email dated March 8, 2023 (copy below), containing a “cure or correct” demand under the Brown Act. Specifically, you express concern focusing on a document posted on a Bakersfield College faculty listserv to which members of the Senate (body rep.) have access and pertaining to a matter within the jurisdiction of the Senate (body rep.) The item was posted by a member of the Senate (body rep.) who is required to post meeting highlights under the Academic Senate’s constitution and bylaws.

Although the constitution and bylaws call for the posting of a highlights document, It is acknowledged that communications by members of the Senate (body rep.) outside a noticed meeting can lead to an unlawful serial meeting if the communication comes to involve a quorum (majority) of the body and relates to matters within the jurisdiction of the Senate (body rep.). I do not have evidence that communications on the list serve concerning this topic were actually responded to or accessed by a majority of the members of the Senate (body rep.). However, please note the actions taken which correspond to your three requests:

1. Removing from the correspondence the link to the material.

Response: We are unable to remove the link to the original Senate Highlights email message that is on the listserv because we do not have system administrator rights to delete all the copies of the email from people’s email accounts and any copies that might now exist on people’s personal devices. However, on March 22, the Senate Administrative Secretary sent out, via blind carbon-copy, a replacement Highlights message that does not have a link to the material.

2. Remove statement 4), the last line of the linked correspondence, because it constitutes your opinion and it could lead to a serial meeting that would otherwise violate the Brown Act.

Response: A revised version of the DEI/EODAC document is now posted to the March 1 agenda packet.

3. Remind the all Academic Senators not to discuss the linked correspondence.

Response: the law permits less than a quorum of the Senate (body rep.) to communicate outside a meeting on matters within its jurisdiction. However, we have reminded the members to proceed with caution to avoid inadvertently involving a majority in those communications. An email reminder was distributed on March 2, 2023.

4. All officers/senators of the BC Senate refraining from future comments on the Diversity, Equity, and Inclusion Committee charge which may impose a serial meeting

Response: See response to Item 4 above.

5. If an additional violation(s) occurs, the Senate will submit to all the members of the Bakersfield College Academic Senate for their approval or rejection of the Diversity, Equity, and Inclusion Committee charge.

Response: If a future violation occurs, the Senate (Body rep.) would need to review the allegations and circumstances and take appropriate action.

I trust the above is responsive to your request.

Sincerely,

Nick Strobel, President

Bakersfield College Academic Senate

---

**From:** Michael McNellis <[mmcnelli@bakersfieldcollege.edu](mailto:mmcnelli@bakersfieldcollege.edu)>

**Subject:** Cure and Correct

**Date:** March 8, 2023 at 3:03:46 PM PST

**To:** Nick Strobel <[nstrobel@bakersfieldcollege.edu](mailto:nstrobel@bakersfieldcollege.edu)>, Tarina Perry <[tperry@bakersfieldcollege.edu](mailto:tperry@bakersfieldcollege.edu)>

**Cc:** Erica Menchaca <[erica.menchaca@bakersfieldcollege.edu](mailto:erica.menchaca@bakersfieldcollege.edu)>

*President Strobel and Presiding Officers/Senators*

*Bakersfield College Senate*

*Dear President Strobel,*

*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*

*On Wednesday March 1, 2023, in a private internal listserv, bc\_faculty, which includes a quorum of BC Senate officers/senators, Senate Secretary Paula Parks' "... highlights of the March 1 Academic Senate meeting" included a link to unauthored material, EODAC, on an item tabled due to a cure and correct*

*demand, IX.f Diversity, Equity, Inclusion Committee. The linked material, assumed at this time to be authored by you (but I could be wrong), violates the scope of the Academic Senate Constitution and Bylaws as well as the demand.*

*As you are aware, the Brown Act creates specific obligations for meetings, including a serial 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. Removing from the correspondence [the link](#) to the material.
2. Remove statement 4), the last line of the [linked correspondence](#), because it constitutes your opinion and it could lead to a serial meeting that would otherwise violate the Brown Act.
3. Remind the all Academic Senators not to discuss the linked correspondence.
4. All officers/senators of the BC Senate refraining from future comments on the Diversity, Equity, and Inclusion Committee charge which may impose a serial meeting
5. If an additional violation(s) occurs, the Senate will submit to all the members of the Bakersfield College Academic Senate for their approval or rejection of the Diversity, Equity, and Inclusion Committee charge.

*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,*

Michael McNellis