



Resolution of Demands for the Graduate Center Auxiliary Enterprise Corporation Regarding Use of Funds and Compliance with Open Meetings Law

Adopted by the Doctoral and Graduate Students' Council (DGSC) on March 24th, 2023

WHEREAS, at each CUNY campus, its Auxiliary Enterprise Corporation (“AEC”) is an independent 501(c)(3) non-profit corporation, and is the entity responsible for advertising, merchandising, food services (including dining services, vending machine operations, and pouring rights), and space rentals to outside parties; and

WHEREAS, according to the Fiscal Year 2023 Mid-Year Financial Report, the Graduate Center (“GC”) currently has a deficit of \$533,000, and due to this deficit, the GC is being asked to cut its Operating Budget by 5.5%; and

WHEREAS, as of June 30, 2022, the Independent Auditor’s Report of the GC AEC (EIN 35-2189280) evaluated its net position at \$4,575,979; and

WHEREAS, in meetings of the GC Budget Committee, it was discussed by the SVP of Finance and Administration that the GC AEC plans to use its funds as institutional funds by allocating them to the Operating Budget to offset this deficit; and

WHEREAS, the GC Senior Administration claims that because the AEC is an independent 501(c)(3), its Board of Directors (BoD) is not subject to New York Open Meetings Law (OML), and therefore, they do not allow non-members to observe the meetings.

WHEREAS, according to *Smith v. CUNY*, the College Association of LaGuardia Community College, which is also an independent 501(c)(3), is subject to OML because it is “a formally chartered entity with officially delegated duties and organizational attributes of a substantive nature” and therefore “should be deemed a public body that is performing a governmental function” because “[i]t is invested with decision-making authority to implement its own initiatives and, as a practical matter, operates under protocols and practices where its recommendations and actions are executed unilaterally and finally, or receive merely perfunctory review or approval.”¹; and

WHEREAS, this ruling was reaffirmed by *Perez v. CUNY* in its reference to the *Matter of Syracuse United Neighbors v. City of Syracuse*, where “The Court concluded that to exempt these committees from the requirements of the Open Meetings Law would exalt form over substance” because “although [these] committees were created to be merely advisory in nature, their recommendations were adopted without exception.”²; and

WHEREAS, because the AEC BoD unilaterally makes binding decisions about allocating its funds towards GC services and the GC deficit, this same description concerning LaGuardia Community College’s College

¹ <https://www.cuny.edu/wp-content/uploads/sites/4/page-assets/current-students/student-affairs/student-life/student-activities-fees/legal-framework/Smith-v.-CUNY.pdf>

² http://www.brooklyn.cuny.edu/web/aca_facultycouncil/110601_Pubs_BCGD_OpenMeetingLawMemo.pdf

Association as well as [Matter of Syracuse] applies to the AEC, and therefore, it should be considered a public body subject to OML; and

WHEREAS, GC AEC Bylaws state that “Directors must vote in person and not by proxy”; and

WHEREAS, on December 7th, 2022, the AEC BoD met remotely, without a notice to the public, in violation of said laws and bylaws; and

WHEREAS, at the February 15th, 2023 GC Community Meeting, the President’s Special Counsel stated on the record that the AEC is indeed subject to OML; and

WHEREAS, the GC kitchen is currently in a state of disrepair; and

WHEREAS, there are currently no hot food options available at the GC; and

WHEREAS, on February 17th, 2023, the Doctoral and Graduate Students’ Council adopted a resolution endorsing the demands of Reclaim the Commons, which are to reopen the GC cafeteria with hot food options, to establish a food pantry, to establish communal space, to repair the kitchen, and to make the AEC an open meeting; and

WHEREAS, GC Housing is currently experiencing a deficit due to the lack of revenue during the pandemic that GC Housing plans to offset through increasing rent by 3.25%; and

WHEREAS, AEC funds can be used to cover GC Housing deficit; and

WHEREAS, undocumented students are refused admission due to the fact that they are not allowed to accept federal funding; and

WHEREAS, the AEC is not considered public funds, and is therefore able to be used as a funding source for undocumented students; and

WHEREAS, traditionally, GC Commencement is funded by the GC AEC; and

WHEREAS, historically, when a graduate paid the \$25 Commencement fee, it would come with up to four guest tickets, with \$25 being charged for each additional guest beyond four, but for the 2023 Commencement, the Commencement fee does not include guests, and students are required to pay \$25 per guest, even for four or fewer guests. This would imply a cost increase of 400% as a graduate with four guests would pay \$125 for what used to cost \$25, without adding other additional costs such as robes; THEREFORE, BE IT

RESOLVED, that the DGSC

1. demands that the AEC be held as an Open Meeting.
2. demands that the funding of the AEC be allocated toward:
 - a. food services at the GC;
 - b. establishing a food pantry at the GC;
 - c. establishing communal space at the GC;
 - d. funding repairs to the GC kitchen;
 - e. offsetting the deficit of GC Housing;
 - f. funding undocumented students;
 - g. funding commencement exercises.